

MAY 2010

## **U.S. Occupational Safety and Health Review Commission Open Government Plan**

### **Background**

The U.S. Occupational Safety and Health Review Commission (hereinafter “Review Commission” or “OSHRC”) is an independent, adjudicatory agency created by the Occupational Safety and Health Act of 1970. Its sole statutory mandate is to serve as an administrative court providing just and expeditious resolution of disputes involving the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor, 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 all parties are treated consistent with due process should a dispute arise.

The Review Commission administers two levels of dispute resolution in accordance with its Rules of Procedure. The first level of adjudication is a hearing before an OSHRC Administrative Law Judge (ALJ). The second level of adjudication is a review of the ALJ’s decision by the full Commission provided that a Commission Member directs review (usually at the request of a party). Thus, the Review Commission essentially consists of both a trial level function (ALJ hearing), and an appellate review function (full Commission). Decisions of the Review Commission are subject to appeal to an appropriate Circuit of the U.S. Court of Appeals.

The Review Commission is classified as a “micro-agency” because of its small size (approximately 67 personnel). Because OSHRC’s functions are limited as described above, the agency does not maintain many of the types of “high value” data sets that are of particular interest in accordance with the Administration’s “Open Government” initiative. In addition, the agency’s information technology (IT) staff consists of two full-time employees located in the National Office, whose primary duties are focused on

operations, support, maintenance and security of the agency's computer and telecommunications infrastructure. The agency's IT staff are responsible for posting Review Commission web site content and work closely with the Government Printing Office, which provides OSHRC's web site hosting, maintenance and support.

Public affairs functions at the Review Commission are additional duties performed by a staff member in the Chairman's Office.

Despite our small size and modest resources, the Review Commission is fully committed to the enhancement of openness and transparency in our operations and mission, consistent with need to ensure respect for due process and privacy rights.

### **Transparency**

In accordance with Office of Management and Budget Directive M-10-06, "Open Government", the Review Commission has developed an "Open Government" web page which is accessible from and highlighted on our main web page. The "Open Government" web page for OSHRC may be found at:

<http://www.oshrc.gov/open/commission.html>

The Review Commission's "Open Government" web page includes three newly developed public disclosure data sets as follows:

1. Commissioners' Monthly Docket Report;
2. Commissioners' Monthly Case Activity Report; and
3. Commission Briefing Notices.

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

As a part of the Review Commission's goal of promoting even greater transparency, we are pursuing the following initiatives, all of which will be posted to the "Open Government" page of the Commission's web site when operational:

1. Posting of selected non-merit based (procedural) decisions of the ALJs;
2. Posting of all Commission-level oral arguments and Commission open meetings, using sound recordings, and/or written transcripts ;
3. Permitting the public to file Freedom of Information Act (FOIA) requests through e-mail; and
4. A listing of docketed contests at the ALJ level.

Our goal is to implement initiatives 1, 2 and 3 by the end of the fiscal year 2010. We expect to begin to implement initiative 4 during FY 2010.

The Review Commission has already begun to post information and documents filed with the Commission concerning our highest interest cases. These may be viewed here: [http://www.oshrc.gov/foia/foia\\_reading\\_room.html](http://www.oshrc.gov/foia/foia_reading_room.html)

This initiative should reduce the need for persons to file individual FOIA requests on matters of general public interest.

### **Enhancing Openness of Decisional Activity at the ALJ Level**

Although predating the formal December 2009 announcement of the Administration's "Open Government" initiative, in March 2009, the Chairman directed that all ALJ

decisions pending Commission review be posted to the agency's web site. As a result, the public has greater information on the ALJ decisions which are under review by the full Commission.

ALJ decisions pending Commission review may be found under the "Decisions" tab of the Review Commission's web site home page.

### **Responding to FOIA Requests**

The Review Commission's FOIA Program is managed by the agency's General Counsel, who serves as the Chief FOIA Officer and reports directly to the Chairman. The Chief FOIA Officer works directly with pertinent staff to obtain and provide responsive documents in a timely fashion. OSHRC administers the FOIA 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 8, 2010, OSHRC processed 57 FOIA requests in FY09, down from 74 FOIA requests in FY08. Of the 57 FOIA requests processed in FY09, OSHRC granted 30 in full or in part, whereas in FY08, OSHRC granted 35 in full or in part. The 30 releases in FY09 represent an approximate 5% increase in the percentage of full or partial grants in FY09 from the percentage of full or partial grants in FY08.

### **Records Management**

The Review Commission's records management program is managed by the agency's Executive Secretary. 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 concerning contests before the Review Commission.

**Public Participation and Collaboration**

The following individuals have primary responsibility for the Review Commission’s “Open Government” initiatives:

Principal Senior Official – Richard Huberman, Chief Counsel, [rhuberman@oshrc.gov](mailto:rhuberman@oshrc.gov)  
(202-606-5370)

Alternate Senior Official – Ray H. Darling, Jr., Executive Secretary, [rdarling@oshrc.gov](mailto:rdarling@oshrc.gov)  
(202-606-5400)

FOIA Issues – Nadine N. Mancini, General Counsel, [nmancini@oshrc.gov](mailto:nmancini@oshrc.gov) (202-606-5410)

Web Site Issues – J. David Walter, Chief Information Officer, [jwalter@oshrc.gov](mailto:jwalter@oshrc.gov) (202-606-5383)

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

U.S. Occupational Safety and Health Review Commission  
1120 20<sup>th</sup> Street, N.W.  
9<sup>th</sup> Floor  
Washington, DC 20036-3457

The Review Commission is committed to increasing openness and transparency to the maximum practicable extent. We 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 Review Commission's transparency initiatives, are welcome to contact us at the addresses or telephone numbers listed above.

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

Updated: 11/09/2011