The U.S. Occupational Safety and Health Review Commission
Strategic Plan, 2010 - 2015
Executive Summary

Mission

Adjudication of workplace safety and health disputes under the Occupational Safety and Health Act of 1970.

Vision

A judicial body that is recognized for being objective, fair, prompt, professional, and respected, and creates and explains a body of law through its decisions that define and explain the rights and responsibilities of employers and employees under the Act;

Values and Guiding Principles

Serving as an administrative court at both the hearing and appellate levels, the Review Commission's values and aspirations include:

- Respect for the rule of law, including due process and fidelity to the agency's mission.
- Issuance of quality decisions at both levels of Review Commission adjudication.
- Professionalism, collegiality and mutual respect among Commissioners, administrative law judges and staff.
- The highest ethical standards and integrity in all we do.
- Teamwork and collaboration, as befits a collegial adjudicatory body.
- Openness, transparency and stakeholder engagement.
- Responsible stewardship of Federal resources entrusted to the agency.
- Investing in and valuing the agency's human capital.

Goals

- Strategic Goal # 1 – Respect for the rule of law by assuring fair, just, and expeditious adjudication of disputes brought before the Commission and its judges.
- Strategic Goal # 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.
- Strategic Goal # 3 - Responsible stewardship of the fiscal and human resources employed by the Review Commission in accordance with the agency's statutory mandate and other applicable law.

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I. Introduction

The U.S. Occupational Safety and Health Review Commission (Review Commission) is committed to ensuring that all parties who come before it - employers, employees, employee representatives, and the U.S. Department of Labor - receive fair and timely resolution of safety and health disputes in American work places. Consistent with the behavior of highly effective organizations, and the Administration's commitment to ensure an open and accountable Federal Government, the Review Commission is reassessing the environment within which it operates to become a more responsive organization – both to the parties who appear before us, as well as to our own employees.

This revised strategic plan is being issued one year after issuance of the Review Commission's last strategic plan, which covered the period 2009 – 2014. Although normally, OMB Circular A-11 contemplates issuance of a revised strategic plan every three years, the Review Commission's leadership is revising the plan at this time as a recommitment to the agency's fundamental mission, vision, values and goals.

First, this revised strategic plan focuses on the importance of targeting the agency's existing case backlog and reducing, in a realistic way, the average age of open Commission-level cases. Second, to the extent consistent with the agency's statutory authority, the Review Commission is seeking to enhance the transparency of its operations. Third, the Review Commission is seeking to ensure that best practices in agency management are in place to ensure taxpayer dollars are wisely spent. Finally, this revised strategic plan addresses employee development indicators – specifically ensuring that staff are adequately trained and developed and that the agency takes advantage of the latest thinking in information sharing, e.g., adoption of knowledge management techniques.

At the Administrative Law Judge (ALJ) level, this strategic plan commits the Review Commission to focus on the development of new measures for assessing workload indices and the use of various strategies to expedite the handling of cases. Our primary goal in this area is to measure the ongoing efforts of our ALJs to resolve disputes without resort to formal hearings. Previous Review Commission strategic plans have focused on measuring the number of hearings held. However, experience indicates that the vast majority of contests at the Review Commission are resolved by ALJs not through formal hearings, but through a variety of other dispute resolution techniques. This helps to reduce costs while ensuring that parties have a full opportunity to reach settlement.

This updated strategic plan has been developed in accordance with the Government Performance and Results Act (GPRA). The agency's annual performance budget will set forth specific performance goals and measures including reporting of ALJ assisted settlement negotiation statistics after development of appropriate measures.

II. Background on the Review Commission

The Review Commission is an independent, adjudicatory agency created by the Occupational Safety and Health Act of 1970 (Act), 29 U.S.C. §§ 651-678. Its sole statutory mandate is to serve as an administrative court providing just and expeditious resolution of disputes involving the U. S. Department of Labor's Occupational Safety and Health Administration (OSHA), the employers OSHA has 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.

The Act and the Review Commission's Rules of Procedure provide two levels of adjudication. The first level provides an employer and/or affected employee who files a timely notice of contest with an opportunity for a hearing before a Review Commission ALJ. The ALJ's decision becomes a final order under the Act unless a member of the Review Commission exercises his/her discretion to direct the case for review. The second level involves the Review Commission's review of an ALJ decision. The Review Commission has three members, appointed by the President and subject to Senate confirmation, who serve six-year terms. Both before its ALJs and the Members of the Review Commission, the agency seeks to provide fair, impartial, and timely adjudication of the cases concerning the safety and health of employees working in the United States.

The principal (National) office of the Review Commission is located in Washington, D.C. There are also two regional offices, one in Atlanta and one in Denver where additional Review Commission ALJs and staff are assigned.

III. Mission Statement

The mission of the Review Commission is to provide an impartial forum for the just and prompt adjudication of workplace safety and health disputes involving the Department of Labor, employers, and employees and/or their representatives under the Occupational Safety and Health Act of 1970.

IV. Vision Statement

The Review Commission strives to be:

- A judicial 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 define and explain 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 strives to improve its performance, service, and value to the American people.

V. Values and Guiding Principles

The Review Commission is an independent Federal administrative agency that decides contests of OSHA-issued citations. As such, the agency functions as an administrative court and includes both hearing level and appellate review functions. Accordingly, the following values are characteristic of the Review Commission's aspirations:

- Respect for the rule of law, including due process and fidelity to the agency's mission.
- Issuance of quality decisions at both levels of Review Commission adjudication.
- Professionalism, collegiality and mutual respect among Commissioners, administrative law judges and staff.
- The highest ethical standards and integrity in all we do.
- Teamwork and collaboration, as befits a collegial adjudicatory body.
- Consistent with due process requirements, openness, transparency and stakeholder engagement.
- Responsible stewardship of Federal resources entrusted to the agency.
- Investing in and valuing the agency's human capital.

VI. Strategic Goals

The Review Commission's strategic plan is focused on the attainment of three separate 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; and 3) Responsible stewardship of the fiscal and human resources employed by the Review Commission in accordance with the agency's statutory mandate and other applicable law.

The Review Commission has set measurable, outcome-oriented objectives which advance the agency's ability to meet these goals. The agency will include its strategic goals and performance objectives and their associated measures in the annual performance plans as part of its performance budget. The Review Commission has established outcome goals to assist it in achieving its strategic goals as summarized below:

Strategic Goal # 1 – Respect for the Rule of Law *Respect for the rule of law by assuring fair, just, and expeditious adjudication of disputes brought before the Commission and its judges.*	**Outcome Goals*** 1. Resolve the oldest cases on the Review Commission's docket. ** 2. Reduce the average age of open cases at the Commission-level. 3. Resolve all priority cases in a timely manner. 4. Ensure that a significant proportion of both complex *** and non-complex cases at the ALJ level are resolved in less than one year.
Strategic Goal # 2 – Expanding Transparency and Openness *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.*	**Outcome Goals** 1. Ensure that the Review Commission's website is accurate, current and complete, and serves as a useful repository for information about the agency and its adjudicatory activities. 2. Produce timely and accurate reports on the Review Commission's activities, including all reports required by law. 3. Update agency's FOIA regulations and FOIA reference guide.

Strategic Goal # 3 – Responsible Stewardship of Fiscal and Human Resources *Responsible stewardship of the fiscal and human resources employed by the Review Commission in accordance with the agency's statutory mandate and other applicable law.*	**Outcome Goals** 1. Improve the Review Commission's outreach activities with affected public and with other Federal agencies. 2. Recruit and maintain a diverse and highly motivated staff with the skills to support the mission of the agency. 3. Invest in human capital by increasing staff development and training opportunities and increasing employees' capabilities and potential. 4. Ensure that the agency's performance management system enhances individual and organizational effectiveness. 5. Improve case tracking through implementation of a new IT case management system. 6. Develop metrics to measure ALJ effort devoted to non-hearing case resolution. 7. Make use of best knowledge management (KM) practices to ensure that employees are better prepared to perform their work, and to provide for continuity and succession planning. 8. Improve the quality of employee work life through enhanced use of IT, telework, wellness programs, etc. 9. Examine opportunities for insourcing of work that has been outsourced to contractors.

*These goals will not apply to cases that are stayed at the Review Commission because criminal law investigations or prosecutions are being pursued.

** The Commission intends to continue to expeditiously review 2008 and future cases and seeks to measure our overall progress in resolving cases at the Commission level by reducing the average age of open cases.

*** Complex cases have one or more of the following characteristics: intricacies of the law; number of parties; volume of documents, including transcripts; large number of witnesses (including expert witnesses in such fields as engineering, architecture, construction, soil, physics, epidemiology, pathology, neurology and infectious diseases); length of the trial; the large amounts of money involved; number of alleged violations, items (including distinct and separate items), and affirmative defenses; technical, novel, difficult or new standards raised; type of cases, such as those involving air pollution, asbestos, and lead poisoning; or extensive pre-trial discovery, including large numbers of interrogatories, conferences, and motions.

VII. Strategic Plan Link to Annual Performance Plans

The Review Commission will formulate performance measures for its strategic goals and each of the related outcome performance goals. The performance measures will be identified in the annual performance budget. They will be used to determine the achievement of the general and outcome goals. These measures will be assessed using information in the Review Commission's case management/tracking system, and they will have concrete and clearly observable outcomes.

The table below illustrates the relationships between the performance goals in the strategic plan and the potential performance measures currently being considered for inclusion in the Review Commission's performance plan.

STRATEGIC PLAN OUTCOME GOALS AND PERFORMANCE PLAN MEASURES

OUTCOME GOALS*	PERFORMANCE MEASURES	FY 2015 TARGETS
Strategic Goal # 1		
Resolve the oldest cases on the Review Commission's docket. **	- All cases docketed at Commission level prior to 2008 resolved.	-Priority goal: to be achieved by end of FY 2011.
Reduce the average age of open cases at the Commission-level.	-Average age of open cases.	-Average age of two years or less.

Resolve all priority cases in a timely manner.	-Percent of priority cases disposed of within 6 months.***	-Dispose of 100% of all priority cases within 6 months of designation.
Ensure that a significant proportion of both complex and non-complex cases at the ALJ level are resolved in less than one year.	-Percent of non-complex cases disposed of within one year at ALJ level. -Percent of complex cases disposed of within one year at ALJ level.	-Dispose of 98% of non-complex cases within one year. -Dispose of 95% of complex cases within a year.
Strategic Goal # 2		
Ensure that the Review Commission's website is accurate, current and complete, and serves as a useful repository for information about the agency and its adjudicatory activities.	-Timeliness of postings to agency web site.	-All material to be posted no later than 7 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 and OPM reports, etc.	-All material to be submitted by required deadlines.
Update agency's FOIA regulations and FOIA Reference Guide.	-Issue revised regulations and Guide.	-This is a priority goal to be completed by the end of FY 2010.
Strategic Goal # 3		
Improve the Review Commission's outreach activities with affected public and with other Federal agencies.	-Participation in professional conferences and meetings.	-A regular education program on Review Commission practices and procedures.
Recruit and maintain a diverse and highly motivated staff with the skills necessary to support the mission of the agency.	-Surveys of agency staff and skills assessments.	-Ranking in top tiers of personnel survey(s).
Invest in human capital by increasing staff development and training opportunities and increasing employees' capabilities and potential.	-Resources dedicated to staff training.	- One percent of basic payroll devoted to staff training and development.
Ensure that the agency's performance management system enhances individual and organizational effectiveness.	-Relationship of employee performance appraisals and awards to meeting agency performance goals.	-All agency awards and appraisals to align with all annual performance goals, including recognition of teamwork.

Improve case tracking through implementation of a new case management system.	-Installation and operation of new software.	-All aspects of case tracking activities to be fully-integrated into case management system.
Develop metrics to measure ALJ effort devoted to non-hearing case resolution.	-Metrics developed.	-Metrics used for reporting purposes.
Make use of best knowledge management (KM) practices to ensure that employees are better prepared to perform their work, and to provide for continuity and succession planning.	-Development of both formal and informal training programs for various aspects of agency's operations. -Development of knowledge management products such as handbooks for new Commissioners and attorneys.	-Development of KM information sharing collection – e.g., protocols & operating procedures for key functions. -Handbooks completed. Priority goal to be completed during FY 2010.
Improve the quality of employee work life through enhanced use of IT, telework, wellness programs, etc.	-Percentage of eligible employees using telework or alternative work schedules. -Participation by agency employees in wellness and other health-oriented programs.	-Consistent with agency work requirements, 100% of all eligible agency employees who request telework and/or alternative work schedules are accommodated.
Examine opportunities for insourcing of work that has been outsourced to contractors.	- Number of positions insourced.	- No work outsourced unless non-core function and justified by cost/benefit analysis.****

* These goals will not apply to cases that are stayed at the Review Commission because criminal law investigations or prosecutions are being pursued.

** The Commission intends to continue to expeditiously review 2008 and future cases and seeks to measure our overall progress in resolving cases at the Commission level by reducing the average age of open cases.

******* Priority cases include Rule 60(b) cases, court remands, and interlocutory reviews.

******** This target does not apply to individuals performing contract work when the work was originally outsourced to such individuals prior to FY 2010.

VIII. Strategies for Improving Public Service

The Review Commission's strategies for achieving its public service goals are outlined below.

A. **REVIEW COMMISSION LEVEL**

- Focus on the disposition of older cases, with the immediate aim of eliminating the existing backlog and reducing the average age of cases on the docket.

- Expedite the disposition of priority cases that are designated as requiring rapid action (e.g., court remands, interlocutory reviews, and Rule 60(b) cases), such that they are disposed of within six months of designation.

- Implement internal metrics to assist in the preparation of cases and issuance of Commission decisions.

- Accelerate processing of cases through a variety of efforts, including early intervention of Commissioners' counsels, computerization of changes to draft decisions and development of strategies to resolve cases when there are only two Commission members.

- Seek and provide training opportunities to all agency attorneys and support staff on a variety of subjects, including technical and legal issues, legal writing, ethics and case management.

- Develop new methods to shorten case preparation time.

- Develop case processing measures for attorneys assigned to cases and ensure that individual performance plans support priorities in the Review Commission's strategic and annual performance plans.

B. **ALJ LEVEL**

- Expedite the assignment of cases to judges.

- Use objective criteria to designate complex cases and track the processing of these cases.

- Closely monitor case performance, and improve case management information systems and reports.

- Analyze and develop measures to ensure that ALJ time spent on non-hearing case resolution matters is appropriately tracked and reported..

- Conduct early review and screening of potentially complex cases to expedite the disposition of such cases.

- Provide training to all judges on a variety of subjects, including technical and legal issues, legal writing, case management, and alternative dispute resolution (ADR) to help them develop services and processes equal to the very best in judicial arenas.

- Create templates that report on the expanded alternative dispute resolution processes (i.e., Mandatory Settlement and Simplified Proceedings) to expedite case processing.

C. **COMMUNICATIONS**

- Provide greater public access to Review Commission activities, particularly posting of ALJ decisions which are under Commission review.

- Provide faster and better public access to, and dissemination of, Review Commission information and decisions.

- Provide greater public access to information through the Review Commission's website.

- Explore and develop technology which will enable electronic transmission of information required by the Review Commission, and improve the quality and efficiency of filing documents with the Review Commission.

- Continue to promote the use of electronic communications when dealing with litigants and other external resources (e.g., government agencies, vendor solicitations, FOIA requests).

- Improve the Review Commission's capability to obtain paperless interfaces and online access with government and non government systems.

D. ENHANCING AGENCY MANAGEMENT

- Create a culture that incorporates core values and provides a work environment that encourages diversity and workplace policies and programs that enable employees to excel, including telecommuting initiatives, family-friendly initiatives, and wellness programs.
- Assess employees' training needs to target and prioritize funding for training.
- Develop new and improved knowledge management strategies, supported by appropriate training, to ensure that employees are knowledgeable about all aspects of the agency's operations, including case processing and resolution, information technology management, personnel requirements, budget and finance requirements, and all other professional and administrative fields that apply to the Review Commission's work.
- Assess the effectiveness of internal communications, develop and disseminate revised Agency policy directives, prepare a list of specific changes that can be made to improve the effectiveness of communications among Review Commission employees, and between employees and managers, and implement necessary changes.
- Continue to improve the agency use of IT resources, including on-line research capabilities and improved Review Commission library services.
- Improve agency IT and telecommunications networks in order to ensure state-of-the-art technologies and practices are used.
- Maintain an infrastructure of modern servers, personal computers, networks, operating systems, databases, telecommunications and other technology.
- Continue to enhance the agency's IT security program plan, and provide IT security awareness training.
- Enhance case management/case tracking by developing systems that will support additional reporting and data communications capabilities, including tracking large or complex cases.

IX. External Risk Factors

The factors which most influence the agency's workload, and hence its strategies, are: the number of safety and health inspections carried out by OSHA each year, the nature of those inspections, the rate at which employers choose to contest the citations issued by OSHA, the number of violations alleged in each contested citation, and the total penalties proposed by OSHA in each contested citation. Achievement of the goals in this strategic plan also depend on a number of other external factors over which the Review Commission does not have control, specifically the maintenance of a quorum of two Commissioners, as well as a full three-member Commission, and the magnitude and nature of the cases received at the ALJ hearing level.

OSHA Enforcement

In recent years, OSHA has focused its enforcement and litigation strategies on more serious violations and hazards, which usually entail higher proposed penalties. OSHA has a policy that results in more follow-up inspections of companies that are alleged to have committed violations of the "highest severity." While the overall number of inspections varies from year to year, the number of complex cases has been growing steadily. For the Review Commission, this means that it must be prepared to receive more large and/or complex cases, consistent with OSHA's emphasis on allegedly willful, significant, and egregious violators.

In addition, legislation is currently pending in Congress that would increase OSHA penalties amounts, as well as expand the rights of employees and their representatives to contest citations and object to proposed settlements. Should this legislation be enacted, it could have an impact on the work load of the Commission, particularly at the ALJ hearing level.

Review Commission Membership

Review Commission member vacancies directly affect the agency's performance at the appellate level. The Act requires a quorum of two Commissioners and the affirmative vote of two Commissioners to decide a pending case. During periods when the Review Commission lacks a quorum, no cases can be decided, although one Commissioner can direct a case for review. With only two Commissioners, it can be more difficult to reach an agreement sufficient to dispose of a pending case as both must agree on all of the issues in the matter. Over the seven-year period starting with FY 2002 and continuing into FY 2009, the Review Commission has been without a third Commissioner for extended periods of time. With fewer than three members, deadlocks on votes may result ("impasses"), action on important issues may be postponed, and action on pending cases may be delayed. In addition, a large and/or complex case has a greater likelihood of impasse with only two Commissioners. The result of these external factors at the Review Commission level has contributed to the agency's backlog of 10 pending cases that are more than two years old.

This strategic plan assumes that all three Commissioner positions will be filled. With a full complement of Commissioners on board, the Review Commission is optimistic that it can meet the high goals set forth for appellate level decision-making. To the extent that the agency operates with less than a full complement of Commissioners, achieving the goals in this strategic plan will be more difficult.

Nature of Cases at the Review Commission Level

The nature and complexity of cases at the Review Commission continues to have an impact on the agency's ability to dispose of cases expeditiously. At the end of fiscal year 2009, there were 10 cases before the Review Commission that were at least two years old, many of which have lengthy records and are complex. While the remaining newer cases are not necessarily complex,

some present legal issues that are both difficult and novel, as might be expected given that the body of law developed by the Review Commission is well into its fourth decade. The Review Commission made substantial efforts in prior fiscal years to issue decisions in these difficult cases, as well as in the lengthy and/or complex cases. While the total inventory of cases has been decreasing,[1] the absence of a third Commissioner for extended periods of time, as noted above, has made it very difficult for the Review Commission to decide all pending cases and reduce its backlog of older cases.

Nature of Cases at the ALJ Level

There are also a variety of factors that could affect the Review Commission's ability to meet its goal at the ALJ level. These include: (1) the magnitude and nature of the cases received, (2) the success of Simplified Proceedings and Mandatory Settlement in reducing the length, complexity or number of hearings needed, and (3) the number, length, and complexity of hearings held. In 2005, the Review Commission revised its Rules of Procedure. The changes were effective on August 1, 2005. Several changes were implemented in the Revised Rules including the lowering of the threshold for cases eligible for mandatory settlements and the raising of the aggregate penalty for entry of cases into Simplified Proceedings. While the agency has revised it Rules of Procedure to change the threshold for case eligibility, the impact of the changes must be monitored to ensure that intended results of more efficient case processing and disposition are achieved.

Legislative and Regulatory Changes

Any regulatory changes by OSHA or statutory changes in the Act could potentially affect the Review Commission's ability to meet the goals of this plan, as noted above with respect to pending legislation.

Additional Factors

Additional factors affecting our ability to meet our strategic plan goals include adequate funding, and the ability to attract and recruit qualified candidates for this specialized area of federal safety and health law.

X. Consultation Planning Process

In developing this plan, the agency relied on an analysis of case processing procedures, case processing statistics from its case tracking system, the fiscal year 2008 performance report, and the agency's internal progress reports for the fiscal year 2009 performance plan. The agency

[1] As of the beginning of fiscal years 2007, 2008, and 2009, the Commission's inventory of pending cases consisted of 27, 25 and 20 cases, respectively.

also reviewed plans of other Federal adjudicative agencies during the drafting stage of this plan.

The Review Commission will submit copies of the updated plan to Congressional committees, post the plan on its Internet website, and distribute the plan to the trade press, trade associations, labor unions, the OSHA Bar, and the Department of Labor.

XI. Program Evaluation

Over the next several years, the Review Commission plans to conduct evaluations and continue ongoing evaluations that will provide information the agency can use to improve its operations, processes, and procedures. The program evaluations required under GPRA will be included in each of our annual performance budgets. The agency's evaluation schedule is noted below:

- Evaluate/monitor electronic filing of legal documents.
- Evaluate the security of information technology systems and security management measures used for addressing security issues annually.
- Audit financial statements annually.

All comments should be sent to Richard C. Loeb at rloeb@oshrc.gov.