



**U.S. OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION**

STRATEGIC PLAN

[DRAFT]

FY 2018-2022

Please send any comments to stratplan@oshrc.gov

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TABLE OF CONTENTS

| | | |
|------|---|----|
| I. | AGENCY AND MISSION INFORMATION | 1 |
| A. | Overview and Mission | 1 |
| B. | Vision | 1 |
| C. | Values | 2 |
| II. | STRATEGIC GOALS | 2 |
| | Strategic Goal #1 – Respect for the Rule of Law | 3 |
| | Strategic Goal #2 – Expanding Transparency and Openness | 4 |
| | Strategic Goal #3 – Promoting Organizational Excellence | 4 |
| | Strategic Goal #4 – Managing Agency Resources in a Manner that Instills Public Trust..... | 4 |
| III. | STRATEGIC OBJECTIVES | 5 |
| A. | Review Level | 5 |
| B. | ALJ Level..... | 5 |
| C. | Executive Director Level | 6 |
| IV. | PERFORMANCE MEASURES AND TARGETS | 8 |
| V. | EXTERNAL FACTORS | 12 |
| A. | OSHA Enforcement | 12 |
| B. | Review Commission Membership | 12 |
| C. | Nature of Cases at the Review Level | 13 |
| D. | Nature of Cases at the ALJ Level | 13 |
| E. | Legislative and Regulatory Changes | 13 |
| F. | Budget | 13 |
| G. | Additional Factors | 13 |
| VI. | CONSULTATION PLANNING PROCESS | 14 |
| VII. | PROGRAM EVALUATION | 14 |

I. AGENCY AND MISSION INFORMATION

A. Overview and Mission

The U.S. Occupational Safety and Health Review Commission (Review Commission) is an independent adjudicatory agency created by the Occupational Safety and Health Act of 1970 (the Act). The 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 (DOL) to ensure that OSHA's enforcement actions are carried out in accordance with the law and that parties are accorded due process.

The Act and the Review Commission's Rules of Procedure, provide two levels of adjudication when an employer timely contests an OSHA citation. The first level affords an employer and/or affected employee who files a timely notice of contest with an opportunity for a hearing before a Review Commission Administrative Law Judge (ALJ). The ALJ's decision becomes a final order under the Act unless a member of the Review Commission exercises their 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. The principal (National) office of the Review Commission is located in Washington, DC. There are also regional offices in Atlanta and Denver, where additional Review Commission ALJs and staff are assigned. Both before its ALJs and the Review Commission members, the agency seeks to provide fair, impartial, and timely adjudication of cases concerning the safety and health of employees' working conditions in the United States.

B. Vision

The Review Commission strives to be:

1. An adjudicative body that is, and is recognized for being, objective, fair, prompt, professional, and respected.
2. An agency that creates a body of law through its decisions that define and clarify the rights and responsibilities of employers and employees under the Act.
3. A model federal agency with highly effective processes, a highly motivated, qualified and diverse workforce, and modern information management, communications, and administrative systems.
4. An agency that values teamwork, develops its employees, and strives to improve its performance, service, and value to the American people.

C. Values

The Review Commission serves as an administrative court at the hearing and appellate levels, and its core principles include:

1. Respect for the rule of law, including due process and fidelity to the agency's mission.
2. Issuance of quality decisions at both levels of Review Commission adjudication.
3. Professionalism, collegiality, and mutual respect among Commissioners, ALJs, and staff.
4. The highest ethical standards and integrity in all the agency does.
5. Teamwork and collaboration, as befits a collegial adjudicatory body.
6. Consistent with due process requirements, openness, transparency, and stakeholder engagement.
7. Responsible stewardship of federal resources entrusted to the agency.
8. Investing in and valuing the agency's human capital.

II. STRATEGIC GOALS

The Review Commission's strategic plan focuses on four goals:

1. Promptly and fairly resolving the cases before it, including reducing the average age of Review-level cases;
2. To the extent consistent with the agency's statutory authority and responsibilities, seeking to enhance the transparency of its operations;
3. Promoting organizational excellence, including a culture of professionalism, mutual respect, and organizational pride, and ensuring that staff members are adequately trained and developed; and
4. Managing agency resources in a manner that instills public trust, including using information and technology to monitor, evaluate, and improve programs and processes in order to better accomplish the agency's mission.

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

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| <p style="text-align: center;">Strategic Goal #1 – Respect for the Rule of Law</p> <p style="text-align: center;"><i>Promptly and fairly resolving cases, including reducing the average age of cases pending at the agency.</i></p> | <p style="text-align: center;">Strategic Objectives¹</p> <ol style="list-style-type: none"> 1. Resolve all priority cases at the Agency in a timely manner.² 2. Develop and implement case management practices that will minimize the average age of all pending Review-level cases. 3. Develop and implement case management practices that will minimize the average age of all pending ALJ-level cases. 4. 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.³ 5. Reduce the average age of all Review-level cases to 20 months from direction for review.⁴ 6. Reduce the number of Review-level cases over two years in age. |
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¹These objectives will not apply to cases that are stayed at the agency because criminal law investigations or prosecutions are being pursued.

²Priority 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, for instance – 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.

³ 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; large proposed penalties; 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 toxins (such as asbestos and lead); or extensive pre-trial discovery, including large numbers of interrogatories, conferences, and motions.

⁴ External factors, such as lack of a quorum or recusal of a Commissioner, may adversely affect the Review Commission’s ability to meet these goals. See “Additional Factors” on page 12.

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| <p style="text-align: center;">Strategic Goal #2 – Expanding Transparency and Openness</p> <p style="text-align: center;"><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> | <p style="text-align: center;">Strategic Objectives</p> <ol style="list-style-type: none"> 1. Ensure that the Review Commission’s website is user-friendly, accessible to people with disabilities, and serves as a useful repository for information about the agency and its adjudicatory activities. 2. Broaden the Review Commission’s outreach activities to the regulated community. |
| <p style="text-align: center;">Strategic Goal #3 – Promoting Organizational Excellence</p> <p style="text-align: center;"><i>Encouraging a culture of professionalism, mutual respect, and organizational pride; ensuring that staff members are adequately trained and developed.</i></p> | <p style="text-align: center;">Strategic Objectives</p> <ol style="list-style-type: none"> 1. Recruit, invest in, and value all employees through professional development, workplace flexibilities, fair treatment, and recognition. 2. Ensure that employees are aware of the agency’s mission and how they contribute to its accomplishments. 3. Provide training opportunities to ALJs. In addition, provide training to all attorneys and support staff in order to enhance their capabilities on technical and legal issues, legal writing, ethics, and technology and case management. |
| <p style="text-align: center;">Strategic Goal #4 – Managing Agency Resources in a Manner that Instills Public Trust</p> <p style="text-align: center;"><i>Providing responsible stewardship of resources to monitor, evaluate, and improve programs and processes in order to better accomplish the agency’s mission.</i></p> | <p style="text-align: center;">Strategic Objectives</p> <ol style="list-style-type: none"> 1. Develop and present an annual budget and performance plan that clearly presents how the organization will accomplish government-wide management priorities, agency-wide goals, and organizational goals. 2. Improve technology infrastructure through efficiencies and investments (e.g., training, equipment, services) to support the effective use of broadband, cyber security, and energy efficiency. 3. Conduct all internal and external agency business in an ethical and timely manner. |

III. STRATEGIC OBJECTIVES

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

A. Review Level

1. Focus on reducing the average age of the oldest pending cases and of all pending cases, with immediate aim of developing and implementing improvements in case management.
2. Expedite the disposition of priority cases that are designated as requiring rapid action (e.g., court remands, interlocutory reviews, and certain Rule 60(b) cases), such that they are disposed of within six months of designation.
3. Expand knowledge management and research tools to accelerate the preparation of cases and issuance of 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 standards that support priorities in the Review Commission's strategic and annual performance plans.
6. Implement appropriate changes to the agency's procedures to expedite case processing.

B. ALJ Level

1. Expedite the assignment of cases to ALJs.
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 Alternative Dispute Resolution (ADR) methods, including a review of recommendations resulting from the evaluation of the Mandatory Settlement Part.

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.

At the ALJ level, this strategic plan includes separate, updated targets based on the complexity and type of the case (e.g., simplified, complex, settlement part, or conventional), to better reflect the Review Commission's recent experience. The Government Performance and Results Act (GPRA) results at the ALJ level have been impacted by a marked increase in the number of citations being contested and the resulting number of contests being docketed. In FY 2009, OSHA issued new policy guidance regarding its expectation that the average penalty for a serious violation would increase from about \$1,000 up to \$3,000 to \$4,000. The actual penalty adjustment went into effect at the start of FY 2011 and the numbers reported by OSHA demonstrated a doubling of assessed penalties for serious violations (from \$1,053 to \$2,132). The impact of the rise in penalties resulted in an increase in the citation contest rate and in the workload for the Review Commission.

While recent data shows that the number of new cases may be stabilizing, the agency's inventory is growing as it is receiving more complex cases which require significantly more of the ALJ's time. In the future, the agency is anticipating a larger influx of cases as a result of the Bipartisan Budget Act, which was signed into effect on November 2, 2015. Section 701 of the Bipartisan Budget Act required OSHA to increase penalty amounts initially by 78 percent with annual adjustments based on the consumer price index. In FY 2015 the Review Commission docketed 2,164 contests with an inventory of 1,099 cases, and in FY 2016 docketed 2,183 contests with an inventory that grew to 1,109 cases. With the penalty rate rising, the agency is anticipating a significant increase in contests due to the new penalty structure, which may also result in an increased inventory.

C. Executive Director Level

1. Develop and present an annual budget and performance plan that clearly presents how the organization will accomplish government-wide management priorities, agency-wide goals, and organizational goals.
2. Provide greater public access to Review Commission activities, information, and decisions, including education and outreach for Limited English Proficiency (LEP) individuals and posting procedural decisions and non-dispositive orders on the Review Commission's website.
3. 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 special emphasis programs (e.g., People with Disabilities, Federal Women's Program, Hispanic Employment Program), telework policies, family-

friendly policies, and wellness programs.

4. Enhance employee development and learning opportunities by devoting available budgetary resources to staff training.
5. Develop and implement recruitment strategies to ensure a highly qualified and diverse workforce.
6. Streamline IT operations, simplify day-to-day management and maintenance, and create a more stable operating environment by eliminating duplication, investing in standardized platforms, realizing cloud first opportunities, and minimizing storage and application sprawl and locally housed servers.
7. Improve network/communications performance to ensure commission personnel have seamless access to systems necessary to perform their work in a timely fashion.
8. Maintain an information security and privacy management program through acceptance and deployment of appropriate federally mandated guidelines and enforcing active policies. Ensure annual FISMA audits are performed and consider having an external Inspector General (IG) (OSHRC does not have an IG) supplement the external independent audit.

IV. PERFORMANCE MEASURES AND TARGETS

The Review Commission will formulate performance measures for its strategic objectives. The performance measures will be identified in the annual performance budget. They will be used to determine the achievement of the strategic goals and objectives. These measures will be assessed using concrete and clearly observable outcomes based on the Review Commission’s annual performance plan.

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

| STRATEGIC OBJECTIVES | PERFORMANCE MEASURES | FY 2022 TARGETS |
|---|--|---|
| Strategic Goal # 1 – Respect for the Rule of Law | | |
| 1. Resolve all priority cases at the Agency in a timely manner. | Percent of priority cases disposed of within 6 months. | Dispose of 100 percent of all priority cases within 6 months of designation. |
| 2. Develop and implement case management practices that will minimize the average age of all pending Review-level cases. | Whether new case management practices have been developed and implemented. | Full implementation of new case management practices. |
| 3. Develop and implement case management practices that will minimize the average age of all pending ALJ-level cases. | Whether new case management practices have been developed and implemented. | Full implementation of new case management practices. |
| 4. 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. ⁵ | <ul style="list-style-type: none"> - Percent of simplified cases disposed of within one year at the ALJ level. - Percent of non-complex conventional cases disposed of within 17 months. | <ul style="list-style-type: none"> - Dispose of 95 percent of simplified cases within one year. - Dispose of 90 percent of conventional cases within 17 months. |

⁵ 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.

| STRATEGIC OBJECTIVES | PERFORMANCE MEASURES | FY 2022 TARGETS |
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| | <ul style="list-style-type: none"> - Percent of settlement part cases disposed of within 19 months. - Percent of complex cases disposed of within 20 months at the ALJ level. | <ul style="list-style-type: none"> - Dispose of 95 percent of settlement part cases within 19 months. - Dispose of 95 percent of complex cases within 20 months. |
| 5. Reduce the average age of all pending Review-level cases to 20 months from direction for review. | Average age of all pending Review-level cases. | Average age of all pending Review-level cases reduced to 20 months by 2022. ⁶ |
| 6. Reduce the number of Review-level cases over two years in age. | Percent reduction in the number of Review-level cases over two years in age. | Reduce the share of Review-level cases over two years in age as follows: <ul style="list-style-type: none"> - FY 2018: No greater than 40% of all cases - FY 2019: No greater than 33% of all cases - FY 2020: No greater than 25% of all cases - FY 2021: No greater than 20% of all cases⁷ |
| Strategic Goal # 2 – Expanding Transparency and Openness | | |
| 1. Ensure that the Review Commission’s website is user-friendly, 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 material to be posted no later than 5 days after issuance. |

⁶ For instance, for FY 2018, the target goal now calculates the average age of a Review-level case based on: (1) cases that are docketed at the review level and decided during the time frame of October 1, 2017 through September 30, 2018; and (2) the age of all cases pending on September 30, 2018.

⁷ For instance, for FY 2018, the target goal takes into account case production from October 1, 2017 through September 30, 2018, with the final percentage measured as of the end of the FY.

| STRATEGIC OBJECTIVES | PERFORMANCE MEASURES | FY 2022 TARGETS |
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| 2. Broaden the Review Commission’s outreach activities to the regulated community. | <p>-Participation in professional conferences and meetings and strategic engagement with the regulated community.</p> <p>-Creation of electronic subscription service.</p> | <p>-Increased participation in at least two activities or meetings that promote strategic engagement to disseminate information including trends and services (e.g., LEP) provided by the agency.</p> <p>-Use of alert service to engage the public.</p> |
| Strategic Goal # 3 – Promoting Organizational Excellence | | |
| 1. Recruit, invest in, and value all employees through professional development, workplace flexibilities, fair treatment, and recognition. | <p>-Recruit, develop, and retain a highly motivated, talented, and diverse workforce to accomplish its mission.</p> <p>-Identify areas in which the agency can enhance diversity and talent through annual analysis of the MD-715⁸ guidance.</p> | <p>Ensure that the agency’s performance management system(s) are aligned with its goals and objectives. Enhance employee development and learning opportunities by making budgetary resources available for staff training. Annually review and/or update agency directives pertaining to workplace flexibilities (e.g., hours of work, telework).</p> <p>-Attract qualified and diverse candidates, including veterans and persons with disabilities.</p> |
| 2. Ensure that employees are aware of the agency’s mission and how they contribute to its accomplishments. | Communicate significant organizational accomplishments with staff. | Enhance the agency’s orientation program for new employees. Ensure that each employee is provided with an annual performance plan that outlines management’s goals and expectations. |
| 3. Provide training opportunities to (1) ALJs and (2) all attorneys and support staff, in order to | Increased attendance and participation in training opportunities, internal and/or external, for ALJs and all | Attendance and participation by ALJs and attorneys and support staff, at no less than one training opportunity annually, internal |

⁸ Equal Employment Opportunity (EEO) Management Directive 715 – Reporting Requirement for Federal Agencies

| STRATEGIC OBJECTIVES | PERFORMANCE MEASURES | FY 2022 TARGETS |
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| enhance their capabilities on technical and legal issues, legal writing, ethics, and technology and case management. | attorneys and support staff. | and/or external, depending on budget constraints. |
| Strategic Goal #4 – Managing Agency Resources in a Manner that Instills Public Trust | | |
| 1. Develop and present an annual budget and performance plan that clearly presents 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. | Implementation of a measurement system to assess and report on progress of financial management improvements and budget integration management reforms. |
| 2. Improve technology infrastructure through efficiencies and investments (e.g., training, equipment, services) to support the effective use of broadband, cyber security, and energy efficiency. | <ul style="list-style-type: none"> - 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. | <ul style="list-style-type: none"> - Reduce physical servers through virtualization. - Reduce the number of operating systems in use. - Increase bandwidth for migration to cloud efficiencies. |
| 3. Conduct all internal and external agency business in an ethical and timely manner. | Promote an ethical culture within the Review Commission through leadership, awareness, resources, and oversight. | Increase employee awareness of ethics responsibilities by conducting agency-wide training. Respond to 75 percent of ethics inquiries within two weeks of receipt. |

V. EXTERNAL FACTORS

Various factors can affect each strategic goal, objective, and performance measure contained in the Review Commission's strategic plan. These factors include OSHA enforcement, Review Commission membership, the nature of cases at the Commission and ALJ levels, the potential effect of legislative and regulatory changes, and budget.

A. OSHA Enforcement

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, and the number and characterization of violations and total penalties proposed by OSHA in each citation, all of which have historically been associated with increases in the contest rate and total number of contested citations. There has been an increase in recent years in both the level of proposed penalties and the contest rate. This has translated into an increase in both the total number of contested cases and the number of complex cases, which typically have longer and more costly trials. Consequently, as discussed previously with respect to the ALJ caseload increase, the overall workload has increased both at the ALJ and Review levels.

B. Review Commission Membership

Achieving the goals depends on having a quorum, as well as the number of sitting Commissioners, as Review Commission member vacancies directly affect the agency's performance at the Commission's Review Level. The Act requires the affirmative votes of two Commissioners to decide a pending case. During periods when the Review Commission lacks the statutory quorum of two Commissioners, no cases can be decided, although one Commissioner can direct a case for review. Moreover, 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. During the five-year period starting with FY 2013 and continuing into FY 2017, the Review Commission has been without a third Commissioner 71 percent of the time.⁹ With fewer than three members, deadlocks on votes may result (i.e., 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. Furthermore, individual Commissioners may be recused from specific cases, with the result that action on this case is impossible with only two Commissioners.

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 its high goals set forth for Review-level decision-making. To the extent that the agency

⁹ There have been significant periods of time during which the Review Commission operated without a full Commission from FY 2013 through FY 2017 (as of August 28, 2017). For example, from October 1, 2012 through April 1, 2014, which is 547 days, the Commission operated without a third Commissioner. A subsequent vacancy of 817 days has existed at the Commission from April 28, 2015 through August 28, 2017.

operates with less than a full complement of Commissioners, achieving the goals in this strategic plan will be more difficult.

C. Nature of Cases at the Review Level

The Review Commission's goal in managing case production is to manage cases so as to minimize the average age of all pending cases as well as the average age of the oldest cases. However, the increasing complexity of the cases at the trial level may result in a higher percentage of cases being petitioned for review.

D. 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 procedures in reducing the length, complexity or number of hearings needed, and (3) the number, length, and complexity of hearings held. The impact of the 2016 statutory penalty increase from a maximum of \$7,000 per violation for serious and non-serious violations to \$12,471; and the increase from a maximum of \$70,000 per violation for willful and repeat violations to \$124,709, are being closely monitored. There are also recent indications that the employer contest rate (percentage of OSHA investigative findings being challenged by the regulated community), has significantly increased in recent months. The impact of these changes can significantly affect case numbers, caseload management, as well as the progression of cases through trial at the ALJ level. The impact of these changes and trends will continue to be closely monitored.

E. Legislative and Regulatory Changes

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.

F. Budget

The agency's goals and measures assume full funding of the Review Commission's budget as submitted by the President to Congress. As a labor-intensive agency, over 90 percent of the agency's budget is dedicated to fixed costs, including about 78 percent for salaries and benefits. If less than the full funding requested is authorized, the agency's ability to produce the results and benefits set forth in this plan will be limited.

G. Additional Factors

Additional factors may affect the Review Commission's ability to meet its strategic plan goals such as the ability to recruit and retain qualified personnel for this specialized area of federal safety and health law.

VI. 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 FY 2013 through 2016 performance report, and the agency's internal progress reports for the FY 2015 and 2016 performance plan. The agency 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 website, and distribute the plan to the trade press, trade associations, labor unions, the OSHA Bar, and the DOL.

VII. 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 the 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 through the annual Federal Information Security Modernization Act (FISMA) Audit.
- Evaluate agency procedures governing budget and finance, procurement, human resources, and time and attendance as part of the Administrative Oversight Audit.
- Coordinate and schedule audit of the agency's Equal Employment Opportunity (EEO) program (e.g., reporting, complaint processing, and education and outreach).

Please send any comments to stratplan@oshrc.gov