



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

STRATEGIC PLAN
[DRAFT]

FY 2022-2026

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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). Its 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 OSHA and 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 defines and clarifies 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. Advancement of diversity, equity, inclusion, and accessibility.
6. Teamwork and collaboration, as befits a collegial adjudicatory body.
7. Consistency with due process requirements, openness, transparency, and stakeholder engagement.
8. Responsible stewardship of federal resources entrusted to the agency.
9. 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 all pending cases.
2. To the extent consistent with the agency's statutory authority and responsibilities, and consistent with due process requirements, seeking to enhance the transparency of its operations;
3. Promoting diversity, equity, inclusion, accessibility, and 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's strategic objectives, measures, and targets will be included in its annual performance plans and budget requests. The Review Commission has established strategic objectives to assist in achieving its strategic goals as summarized below:

Strategic Goal #1 – Respect for the Rule of Law	Strategic Objectives¹
<p><i>Promptly and fairly resolving the cases before it, including reducing the average age of all pending cases.</i></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 Commission 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. Ensure that the average age of all Commission review-level cases is no greater than 18 months from direction for review.⁴ 6. Ensure that no more than 20 percent of Commission review-level cases are older than two years and ensure that no cases are older than three years from direction for review.

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.

³Complex cases have one or more of the following characteristics: various intricacies of the law; more than two parties; violations characterized as willful and/or repeat; high 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); multiple days of hearing; high number of alleged violations, citation items (including distinct and separate items), and affirmative defenses; technical, difficult or new standards raised; novel issues or issues of first impression; or extensive pre-trial discovery.

⁴External 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 “External Factors” on page 13.

<p>Strategic Goal #2 – Expanding Transparency and Accessibility</p> <p><i>To the extent consistent with the agency’s statutory authority and responsibilities, and consistent with due process requirements, seeking to enhance the transparency of its operations.</i></p>	<p>Strategic Objectives</p> <ol style="list-style-type: none"> 1. Ensure that the agency’s website provides equitable access to all users and serves as a useful repository for information about the agency and its adjudicatory activities. 2. Broaden the agency’s outreach activities to the regulated community. 3. Ensure that the agency’s electronic filing (e-filing) system provides equitable access to all users.
<p>Strategic Goal #3 – Promoting Equity and Organizational Excellence</p> <p><i>Promoting diversity, equity, inclusion, accessibility, and organizational excellence, including a culture of professionalism, mutual respect, and organizational pride, and ensuring that staff members are adequately trained.</i></p>	<p>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. Provide training for all agency personnel, including ALJs and Commission members, on diversity, equity, inclusion, and accessibility considerations in the workplace and in interacting with and serving the public. 3. Ensure that all agency personnel are aware of the agency’s mission and how they contribute to its accomplishments. 4. Provide training opportunities to all agency personnel, including ALJs and Commission members. In particular, 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. 5. Integrate knowledge management processes into a plan to capture, share, and generate knowledge that establishes a unified network of personnel, processes, and technology to enhance all aspects of essential agency operations.

<p align="center">Strategic Goal #4 – Managing Agency Resources in a Manner that Instills Public Trust</p>	<p align="center">Strategic Objectives</p>
<p><i>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.</i></p>	<ol style="list-style-type: none"> 1. Develop and present an annual budget and performance plan that clearly establishes how the agency 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. Maintain and enhance secure electronic information systems for case management, legal research, public access to data through the internet, and continuity of the agency’s operations at all times. 4. 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. Commission review-level

1. Focus on reducing the average age of the oldest pending cases and of all pending cases, with the 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 FRCP 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, technology and case management, diversity, equity, inclusion, and accessibility considerations in the workplace and in interacting with and serving the public.

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 the management of cases 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. Provide training to all ALJs 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. In addition, provide ALJs and support staff with training on diversity, equity, inclusion, and accessibility considerations in the workplace and in interacting with and serving the public.
6. Continue to use a team of ALJs 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) that better reflect the Review Commission's experience over recent years. Outcomes at the ALJ level have been impacted over time by an increase in the number of citations being contested and the resulting number of contests being docketed. While data over the past several years shows that the number of new cases may be stabilizing, until recently the agency's inventory had been growing as it received more complex cases which required significantly more of the ALJs' time.

Up until FY 2020, the agency received a relatively steady number of contested cases. OSHA's administrative policy implemented in FY 2011 and the increase in OSHA penalties required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, led to an increase in the average proposed penalty for violations, as well as the contest rate. Consequently, in FY 2017, the Review Commission docketed 2,168 contested cases; 2,144 in FY 2018; and 2,017 in FY 2019. While the number of docketed cases decreased to 1,845 in FY 2020 and 1,365 in FY 2021, it is estimated that 2,000 contested cases will be docketed by the end of FY 2022.

The Review Commission attributes the decrease in the number of docketed cases for FY 2020 to the circumstances created by the national emergency declared on March 13, 2020,

due to the Coronavirus Disease 2019 (COVID-19) pandemic. This emergency created a situation for OSHA which is destined to affect the Review Commission's workload. On March 12, 2021, OSHA issued a National Emphasis Program (NEP) to ensure that "employees in high-hazard industries are protected from the hazard of contracting [COVID-19]." The NEP directs OSHA to target worksites that have workers with increased potential exposure to this health hazard. In addition, it directs OSHA to ensure that workers are protected from retaliation for raising safety and health concerns related to COVID-19. This increased enforcement effort requires that 5% of each OSHA region's total inspections relate to COVID-19 (OSHA-wide this is approximately 1,600 total inspections). This rise in inspections is expected to elevate the number of contested cases docketed with the Review Commission and result in an increased workload. Additionally, OSHA has issued an emergency temporary standard (ETS) to address healthcare workers' exposure to COVID-19, effective June 21, 2021. OSHA's enforcement activity will likely increase due to the ETS, which will lead to more contested cases docketed with the Review Commission. If OSHA promulgates a permanent standard for the healthcare industry, or any other industry, the associated increase in enforcement activity will continue for a longer duration.

C. Executive Director Level

1. Develop and present an annual budget and performance plan that clearly presents how the agency 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 agency's website.
3. Create a culture that incorporates core values and provides a work environment that encourages diversity. Formulate 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. Develop and implement recruitment strategies to ensure a highly qualified, diverse, and inclusive workforce.
5. Enhance employee development and learning opportunities by devoting available budgetary resources to staff training including courses on diversity, equity, inclusion, and accessibility considerations in the workplace and in interacting with and serving the public.
6. Streamline information technology (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, reducing locally housed servers, and minimizing storage and application sprawl.
7. Improve network/communications performance to ensure all 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 that Federal Information Security Modernization Act (FISMA) audits are performed annually.
9. Implement knowledge management practices to ensure that knowledge affecting essential agency programs and operations is captured, shared, and generated on a continuous basis.

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 plan’s strategic objectives and the potential performance measures currently being considered for inclusion in the Review Commission’s performance plan.

STRATEGIC OBJECTIVES	PERFORMANCE MEASURES	FY 2026 TARGETS
Strategic Goal # 1 – Promptly and Fairly Resolving Cases		
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 Commission 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	Percent of simplified cases disposed of within one year at the ALJ level.	Dispose of 95 percent of simplified cases within one

STRATEGIC OBJECTIVES	PERFORMANCE MEASURES	FY 2026 TARGETS
one year to 20 months from docketing. ⁵	-Percent of non-complex conventional cases disposed of within 17 months at the ALJ level. -Percent of settlement part cases disposed of within 19 months. -Percent of complex cases disposed of within 20 months at the ALJ level.	year. ⁶ -Dispose of 95 percent of conventional cases within 17 months. -Dispose of 95 percent of settlement part cases within 19 months. -Dispose of 95 percent of complex cases within 20 months. ⁷
5. Ensure that the average age of all Commission review-level cases is no greater than 18 months from direction for review.	Average age of all pending Commission review-level cases.	Average age of all pending Commission review-level cases is no greater than 18 months. ⁸
6. Ensure that no more than 20 percent of Commission review-level cases are older than two years and ensure that no cases are older than three years from direction for review.	Percentage of Commission review-level cases that are older than two years and percentage of cases older than three years.	Ensure that no greater than 20 percent of Commission review-level cases are older than two years and that there are no cases older than three years. ⁹

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.

⁶ For FYs 2022 and 2023, the target is to dispose of 90 percent of simplified cases within one year.

⁷ The FY 2022 target is to dispose of 85 percent of complex cases within 20 months. The FY 2023 target is to dispose of 90 percent of complex cases within 20 months.

⁸ For instance, for FY 2022, the target goal calculates the average age of a Commission review-level case based on: (1) cases that are docketed at the review level and decided during the time frame of October 1, 2021 through September 30, 2022; and (2) the age of all cases pending on September 30, 2022.

⁹ For instance, for FY 2022, the target goal takes into account case production from October 1, 2021 through September 30, 2022, with the final percentage measured as of the end of the FY.

STRATEGIC OBJECTIVES	PERFORMANCE MEASURES	FY 2026 TARGETS
Strategic Goal # 2 – Enhancing Transparency and Openness		
1. Ensure that the agency’s website provides equitable access to all users and serves as a useful repository for information about the agency and its adjudicatory activities.	<ul style="list-style-type: none"> -Timeliness of postings to agency website. -Perform annual vendor-initiated review of the agency’s webpage for compliance with Section 508 of the Americans with Disabilities Act. 	<ul style="list-style-type: none"> -All material to be posted no later than 3 days after issuance. -Conduct an annual audit of website’s compliance with Section 508 of the Americans with Disabilities Act.
2. Broaden the agency’s outreach activities to the regulated community.	<ul style="list-style-type: none"> -Participation in professional conferences and meetings and strategic engagement with the regulated community. -Expand electronic notification services information for internal and external users. 	<ul style="list-style-type: none"> -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. -Use additional social media outlets to notify and engage with internal and external users.
3. Ensure that the agency’s electronic filing (e-filing) system provides equitable access to all users.	Monitor monthly maintenance activities performed by application host.	Conduct annual audit of the e-filing system’s compliance with Section 508 of the Americans with Disabilities Act.
Strategic Goal # 3 – Promoting Equity and Organizational Excellence		
1. Recruit, invest in, and value all employees through professional development, workplace flexibilities, fair treatment, and recognition.	<ul style="list-style-type: none"> -Recruit, develop, and retain a highly motivated, talented, and diverse workforce to accomplish the agency’s mission. -Identify areas in which the agency can enhance diversity and talent through annual analysis of the MD-715¹⁰ guidance. 	<ul style="list-style-type: none"> -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).

¹⁰ Equal Employment Opportunity (EEO) Management Directive 715 – Reporting Requirement for Federal Agencies.

STRATEGIC OBJECTIVES	PERFORMANCE MEASURES	FY 2026 TARGETS
		-Attract qualified and diverse candidates, including veterans and persons with disabilities, by engaging with equal employment advocacy organizations.
2. Provide training for all agency personnel, including ALJs and Commission members, on diversity, equity, inclusion, and accessibility considerations in the workplace and in interacting with and serving the public.	Develop, review, and update training materials to educate staff on diversity, equity, inclusion, and accessibility considerations both in the workplace and while interacting with and serving the public.	Annual training for all staff to advance diversity, equity, inclusion, and accessibility.
3. Ensure that all agency personnel 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.
4. Provide training opportunities to all agency personnel, including ALJs and Commission members. In particular, 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.	Increased opportunities for attendance and participation in training, internal and/or external, for ALJs and all attorneys and support staff.	Attendance and participation by ALJs and attorneys and support staff, at no less than one training opportunity annually, internal and/or external, depending on budget constraints.
5. Integrate knowledge management processes into a plan to capture, share, and generate knowledge that	-Conduct periodic knowledge management audits to identify sources of knowledge and “at risk” knowledge gaps. ¹¹	-Knowledge gaps in essential agency programs are identified and addressed through an on-going annual evaluation.

¹¹ 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.

STRATEGIC OBJECTIVES	PERFORMANCE MEASURES	FY 2026 TARGETS
<p>establishes a unified network of personnel, processes, and technology to enhance all aspects of essential agency operations.</p>	<p>-Tailor IT infrastructure to support the effortless sharing and transfer of knowledge.</p> <p>-Degree to which best practices and lessons learned are integrated into the performance management system.</p>	<p>-Annual audit to ensure that technology is aligned with the needs of the agency’s personnel and processes.</p> <p>-Use of the performance planning process to reflect the value of rewarding employees for creating, using, and sharing knowledge.</p>
<p>Strategic Goal #4 – Managing Agency Resources in a Manner that Instills Public Trust</p>		
<p>1. Develop and present an annual budget and performance plan that clearly establishes how the organization will accomplish government-wide management priorities, agency-wide goals, and organizational goals.</p>	<p>System that links resources to specific activities that support measurable programmatic outcomes and objectives.</p>	<p>Implementation of a measurement system to assess and report on progress of financial management improvements and budget integration management reforms.</p>
<p>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.</p>	<p>-Streamline operations and infrastructure to eliminate duplication; minimize servers, storage, and application sprawl.</p> <p>-Consolidation of technological services and move from an “on premise” infrastructure to a modern “cloud” based system to promote efficiencies in systems management, remote accessibility, continuity of operations, and budget savings.</p> <p>-Maintain standardized platforms, including hardware and software.</p> <p>-Partner with Federal agencies that monitor network traffic and isolate potential risks.</p>	<p>-Reduce physical servers through virtualization.</p> <p>-Reduce the number of operating systems in use by consolidation and translocation of physical servers.</p> <p>-Review and evaluate bandwidth utilization to accommodate an expected need for additional resources as a result of cloud computing.</p> <p>-Report annual compliance with applicable executive orders and/or binding operational directives.</p>

STRATEGIC OBJECTIVES	PERFORMANCE MEASURES	FY 2026 TARGETS
3. Maintain and enhance secure electronic information systems for case management, legal research, public access to data through the internet, and continuity of the agency’s operations at all times.	Conduct periodic audits of information systems to verify systems availability are at acceptable levels.	-Improve network communications to ensure stakeholders can access necessary information without delay. -Maintain hardware platforms at supportable levels.
4. Conduct all internal and external agency business in an ethical and timely manner.	Promote an ethical culture within the agency through leadership, awareness, resources, and oversight.	Increase employee awareness of ethics responsibilities by conducting virtual or in-person agency-wide training. Respond to 90 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, increases in the number of citations being contested and the resulting number of contests being docketed at the ALJ level, the potential effect of legislative and regulatory changes, and budget. The impact of the COVID-19 pandemic on courtroom availability and travel can also affect each goal, objective, and performance measure.

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 the level of proposed penalties, contest rate, the total number of contested cases, and the number of complex cases. Complex cases typically have longer and more costly hearings. Consequently, the overall workload has increased both at the ALJ level and Commission review-level.

However, as discussed previously, there was a decrease in the number of docketed cases in FY 2020 due to the circumstances created by the COVID-19 pandemic. This emergency created a situation for OSHA which is destined to affect the Review Commission’s workload. On March 12, 2021, OSHA issued a NEP to ensure that “employees in high-hazard industries are protected from the hazard of contracting [COVID-19].” The NEP directs OSHA to target worksites that have workers with increased potential exposure to this health hazard. In

addition, it directs OSHA to ensure that workers are protected from retaliation for raising safety and health concerns related to COVID-19. This increased enforcement effort requires that 5% of each OSHA region's total inspections relate to COVID-19 (OSHA-wide this is approximately 1,600 total inspections). This rise in inspections is expected to elevate the number of contested cases docketed with the Review Commission and result in an increased workload in the coming years. Additionally, OSHA has issued an emergency temporary standard (ETS) to address healthcare workers' exposure to COVID-19, effective June 21, 2021. OSHA's enforcement activity will likely increase due to the ETS, which will lead to more contested cases docketed with the Review Commission. If OSHA promulgates a permanent standard for the healthcare industry, or any other industry, the associated increase in enforcement activity will continue for a longer duration.

B. Review Commission Membership

Achieving the strategic plan's goals depends on the number of sitting Commissioners, as Review Commission member vacancies directly affect the agency's performance at the Commission 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 sitting 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, FY 2017 through FY 2021, the Review Commission operated without a third Commissioner 31 percent of the time.¹² 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, an individual Commissioner may be recused from a specific case, with the result that action on such a case is impossible with only two sitting 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 strategic plan goals set forth for decision-making at the review-level. To the extent that the agency operates with less than a full complement of Commissioners, achieving those goals will be more difficult.

C. Nature of Cases at the Commission review-level

The Review Commission's goal is to manage its docket 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 ALJ 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 goals at the ALJ level. These include: (1) the magnitude and nature of the cases received,

¹²The Commission operated with one Commissioner during the period of April 28, 2019, through January 16, 2020, which is 264 days.

(2) the success of Simplified Proceedings and Mandatory Settlement procedures in reducing the length, complexity, or number of hearings needed, (3) the number, length, and complexity of hearings held, (4) potential issues related to obtaining courtroom space and travel concerns due to the COVID-19 pandemic, and (5) potential higher employer contest rates of COVID-related cases. Due to an anticipated increase in citations being issued by OSHA for COVID-related cases, higher employer contest rates are expected. The impact of these changes can significantly affect case numbers, caseload management, as well as the progression of cases 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 75 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 occupational 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 2017 through FY 2020 performance report, and the agency's internal progress reports for the FY 2019 and FY 2020 performance plan. The agency also reviewed plans of other federal adjudicative agencies during the drafting stage.

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 will continue conducting evaluations to provide the agency with information 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 and monitor the electronic filing of legal documents.

- Evaluate the security of IT systems and security management measures through the annual FISMA audit.
- Review data circuit performance and provide remediation in response to expected increase in usage of cloud-based technologies.
- 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 EEO program (e.g., reporting, complaint processing, and education and outreach).