

The Occupational Safety and Health Review Commission

Strategic Plan

2003-2008

Introduction

The Review Commission strives to ensure 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. The Review Commission is committed to providing superior service to the public and its employees. Consistent with the behavior of highly effective organizations, the agency is reassessing the environment within which it operates.

This updated and revised strategic plan is submitted consistent with the Government Performance and Results Act (GPRA) requirement that agencies review and update their strategic plans every three years. The 2003 - 2008 strategic plan focuses on the agency's general goals of:

- reducing the time it takes to dispose of cases;
- disposing of all cases pending for more than two years at the Commission level, using a first-in, first-out strategy;
- improving the quality of decisions and case processing; and
- expanding the use of existing expedited dispute resolution processes.

In this strategic plan, the Review Commission has:

- Revised its outcome objectives to focus on reducing the time it takes to dispose of Commission-level cases. Currently, more than 40 cases have been pending for commission review more than two years. A large percentage of these cases are more than three years old.
 - Consolidated its performance objectives at the Administrative Law Judge (ALJ) level. Specifically, it has combined the two prior performance objectives relating to settled cases with the two performance objectives relating to cases that are disposed of after hearings at the ALJ level.
 - Deleted its external communication and organizational goals to focus more on the adjudication of cases; however, these goals will continue to be a priority within the agency and will be monitored for effectiveness.
- The agency's annual performance budget will include specific, measurable performance goals so that the agency can assess its progress in providing the most expeditious adjudication of cases, consistent with due process requirements. The Review Commission's performance budget will address interim annual targets as well as longer range targets, with the ultimate goal of disposing of Commission level cases within nine months of the cases being directed for review, and resolving cases at the ALJ level at a more rapid pace than in the past.

Background on the Review Commission

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

Employers contesting citations are entitled to a full evidentiary hearing, before the Review Commission's ALJ's, consistent with the Review Commission's Rules of Procedure and the rules used by U. S. Federal District Courts. The Occupational Safety and Health Act and the Review Commission's Rules of Procedure, which are like the federal rules, provide two levels of adjudication when an employer timely contests an OSHA citation for alleged violations of the Act or for failure to abate such alleged violations. The first is a hearing level before an ALJ. This level affords an opportunity for a hearing before a Review Commission ALJ for employers and affected employees who have filed a timely notice of contest. The judge's decision becomes final unless the Commission chooses to review the decision. The second level is a discretionary appellate review of the judge's decision by the Commission's members. The Review Commission has three members, appointed by the President and subject to Senate confirmation, who serve six-year terms. Both before its judges and the Commissioners, the Review Commission seeks to provide fair, impartial, and timely adjudication of cases concerning the safety and health of employees' working conditions in the United States.

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

External 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, and the rate at which employers choose to contest the citations issued and penalties proposed by OSHA. Achievement of the goals in this strategic plan also depends on a number of other external factors over which the Review Commission does not have control - the maintenance of a quorum of two Commissioners and a full three-member Commission, and the magnitude and nature of the cases received at the ALJ hearing level.

In recent years, OSHA has focused its enforcement and litigation strategies on more serious violations and hazards, which entail higher proposed penalties. Most recently, OSHA has re-established a policy that will result in more follow-up inspections of companies that are alleged to have committed violations of the "highest severity." Thus, while the overall number of inspections has varied, the number of complex cases has been growing. For the Review Commission, this means that it must prepare to receive more large and/or complex cases, consistent with OSHA's emphasis on allegedly willful, significant, and egregious violators.

In addition to the complexity of cases, Commission vacancies also affect the Review Commission's performance at the appellate level. The Occupational Safety and Health Act requires a quorum of two Commissioners and the affirmative vote of two Commissioners to decide a case. During periods when the Commission has no quorum, no cases can be decided, although one Commissioner can direct a case for review. Moreover, with only two Commissioners, it is more difficult to reach an agreement sufficient to dispose of cases. 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. Larger and more complex cases have a greater likelihood of an impasse with only two members. The result of these external factors has been that at the Commission level, a large percentage of the complex cases are more than four years old.

There are also a variety of factors that could affect our ability to meet our goal at the ALJ hearing level. These include: (1) the magnitude and nature of the cases received, (2) the success of E-Z Trial and Settlement Part in reducing the length, complexity or number of hearings needed, and (3) the number, length, and complexity of hearings held.

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

Perspective and Outlook

The stability of the Review Commission membership will continue to affect the agency's ability to meet its strategic plan commitments. During the years covered by this plan, the term appointments of two Commissioners will expire. Any vacancies need to be filled as expeditiously as possible to maintain a quorum and hopefully full Commission membership. The possibility of changing membership usually requires a period of transition, to enable any new Commissioner(s) to become knowledgeable about the Review Commission's mission, legal precedents, and processes.

During the FY 1996-1999 period, the Commission had a full membership of three Commissioners for only about 12 months out of the 36-month period. During FY 1998 - 2002 the Commission had only one Commissioner for 22 months out of the 60-month period. Most significant, is the fact that for 10 months in FY 1998, and eight months in FY 2002, the Commission had only one member.

Despite the quorum difficulties, the Commission continued to receive new cases^[1]. The backlog created by the lack of a full Commission has a direct and adverse impact on the Commission's ability to carry out its mission. The Review Commission's pending inventory continues to grow. As of October 1, 2002, the Commission's inventory of pending cases consisted of 33 cases that were one year to four years old. Ten cases had been pending for one to two years, 15 cases had been pending for two to three years, and eight cases had been pending for three to four years. An additional 19 cases had been pending for more than four years.

Finally, the assumption of OSHA jurisdiction over United States Postal Service cases, which Congress mandated in 1998, will continue to impact the agency's workload. The agency has already received some of these cases, with the impact of future cases uncertain at this time.

Mission Statement

The mission of the Occupational Safety and Health 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.

Vision Statement

The Review Commission continues to strive to be:

- S a judicial body that is -- and is recognized for being -- objective, fair, prompt, and professional;
- S an agency that creates a body of law through its decisions that defines and explains the rights and responsibilities of employers and employees under the Occupational Safety and Health Act of 1970;
- S a model Federal agency with highly effective processes, a highly motivated, qualified and diverse workforce, and modern information management, communications, and administrative systems; and
- S an agency that values team work, develops its employees, and strives to improve its performance, service, and value to the American people.

Strategic Goal

Consistent with its mission and vision, the Review Commission’s strategic plan is focused on the attainment of one public service goal: to assure fair, just, and expeditious adjudication of disputes brought before the Commission and its ALJs. The agency has set measurable, outcome-oriented objectives which advance the agency toward meeting its goals. The agency will include this strategic goal and performance objectives and their associated measures in the annual performance plans.

Public Service Goal

Public Service Goal
 To assure fair, just, and expeditious adjudication of disputes brought before the Commission and its judges.

The agency has established outcome goals to assist it in achieving its general public service goal of assuring fair, just and expeditious adjudication of disputes brought before the agency.

OUTCOME GOALS *
Reduce the length of time to resolve Commission-level cases
Increase the percent of non-complex cases at the ALJ level that are resolved in less than one year
Increase the percent of complex cases at the ALJ level that are resolved within 18 months

Performance Measures

The Review Commission will formulate performance measures for the strategic goal and its related performance goals. The performance measures that will be used to determine the achievement of the general and outcome goals will be identified in the annual performance budget. These measures will be assessed using information in the Review Commission’s case management/tracking system, and 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.

Table: STRATEGIC PLAN OUTCOME GOALS AND POTENTIAL PERFORMANCE PLAN MEASURES

OUTCOME GOALS*	POTENTIAL PERFORMANCE MEASURES	FY 2008 TARGETS
Reduce the length of time to resolve Commission-level cases	-Percent of cases over 2 years old disposed of at the Commission level -Percent of priority ** cases disposed of within 6 months	-Dispose of 100% of cases directed for review within 9 months -Dispose of 100% of all priority cases within 6 months of designation
Increase the percent of non-complex cases at the ALJ level that are resolved in less than one year	-Percent of non-complex cases disposed of in less than a year at ALJ level	-Dispose of 100% of non-complex cases within 6 months
Increase the percent of complex cases at the ALJ level that are resolved within 18 months	-Percent of complex cases disposed of within 18 months at ALJ level	-Dispose of 95% of complex cases within a year

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

**Priority cases include cases that will be remanded to the ALJ level, Rule 60(b) cases, court remands, and interlocutory reviews.

Strategies for Improving Public Service

The Review Commission’s strategy for achieving its public service goal is to continue to pursue the expeditious disposition of cases while delivering quality service to the public through a variety of means.

COMMISSION AND ALJ LEVELS

- C Develop procedures for case processing and decision quality
- C Make changes to the agency’s Rules of Procedures to improve case processing

COMMISSION-LEVEL

- C Focus on the disposition of older cases, with the immediate aim of reducing the existing backlog and the eventual goal that no case will sit for more than nine months on review.
- C Expedite the disposition of priority cases that require rapid action (e.g., cases that are to be remanded back to the ALJ level, court remands, interlocutory reviews, and Rule 60(b) cases), such that they are disposed of within six months on review

- C Implement internal targets to assist in the preparation of cases and issuance of Commission decisions
- C 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
- C Expand use of teams and staff meetings in the Office of the General Counsel to reduce the time needed to write decisional memoranda and draft decisions
- C Develop new methods to shorten case preparation time

ALJ HEARING LEVEL

- C Expedite the assignment of cases to judges
- C Use objective criteria to determine complex cases, and track the processing of these cases
- C Monitor closely case performance, and improve case management information systems and reports
- C Conduct early review and screening of the potentially difficult cases to expedite the disposition of such cases
- C 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
- C Improve and expand existing ADR processes (i.e., Settlement Part and the E-Z Trial) and seek new ADR methods
- C 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

Consultation Planning Process

In developing this plan, the agency relied on extensive analysis of case processing procedures, case processing statistics from our case tracking system, the fiscal year 2002 performance report, and progress reports based on the agency's fiscal year 2003 performance plan. The agency also reviewed plans of, and when appropriate, consulted with, other Federal adjudicative agencies during the drafting stage of our plan.

The Review Commission consulted with Congressional staff, published a notice in the Federal Register stating that copies of the plan are available, posted the plan on its Internet website, and

distributed the plan to the trade press, trade associations, labor unions, the OSHA Bar, and the Department of Labor.

Program Evaluation

Over the next several years the agency plans to conduct evaluations that will provide information that 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 program and process evaluation approaches include the following components:

- C Evaluate the case management/tracking system
- C Evaluate E-Government programs, such as the electronic filing of legal documents
- C Evaluate the security of information technology systems and security management measures for addressing security issues
- C Audit financial statements annually
- C Evaluate the agency's human resource management program

In addition to the performance measures envisioned in GPRA, the agency will also create sub-level targets for each functional unit. These internal targets are operational tools to buttress efforts to achieve the public service goal. For example, the agency will set interim milestones and track incremental processing steps or developments on Commission-level cases, which, if achieved, should assist in achieving the goals pertaining to Commission review.

[1] New Commission cases accepted for review during this period were as follows: 47 cases in FY 1998; 36 cases in FY 1999; 52 cases in FY 2000; 31 cases in FY 2001; and 27 cases in FY 2002