

**The Occupational Safety and Health Review Commission  
Strategic Plan**

**2006-2011**

**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 to be more citizen-centered, and to make the most effective use of our resources.

- The agency's 2003 - 2008 strategic plan focused 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, improving the quality of decisions and case processing, and expanding the use of existing, expedited dispute resolution processes. This updated and revised strategic plan reaffirms our goals and commitment to expedite the disposition of cases that come before the agency.

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 2006-2011 strategic plan:

- Focuses on reducing the time it takes to dispose of Commission-level cases, with the ultimate goal in fiscal year 2011 of disposing of Commission-level cases within ninemonthsof being directed for review.
- Reinforces performance objectives to dispose of cases (after a hearing at the Administrative Law Judge (ALJ) level) at a faster pace than in the past.
- Implements the agency's revised *Procedural Rules Governing Practice Before the Occupational Safety and Health Review Commission* and other strategies, including expedited dispute resolution processes to assist in the efficient processing of cases before the Review Commission.

The agency's annual performance budget will set forth specific performance goals and measures so that the agency can assess its progress in providing the most expeditious adjudication of cases, consistent with due process requirements.

**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.

**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 ALJs, 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.<sup>1</sup> 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.

**Vision Statement**

The Review Commission strives to be:

- a judicial body that is -- and is recognized for being -- objective, fair, prompt, and professional;
- 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;
- a model Federal agency with highly effective processes, a highly motivated, qualified and diverse workforce, and modern information management, communications, and administrative systems; and
- an agency that values team work, develops its employees, and strives to improve its performance, service, and value to the American people.

**Strategic Goal**

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's ability to meet its goals. The agency will include its strategic goal and performance objectives and their associated measures in the annual performance plans as part of its performance budget. 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.

Public Service Goal	Outcome Goals*
<i>To assure fair, just, and expeditious adjudication of disputes brought before the Commission and its judges.</i>	1. Reduce the length of time to resolve Commission-level cases  2. Increase the percent of non-complex cases at the ALJ level that are resolved in less than one year  3. Increase the percent of complex cases at the ALJ level that are resolved within 18 months

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

**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.

**OSHA Enforcement**

In recent years, OSHA has focused its enforcement and litigation strategies on more serious violations and hazards, which entail higher proposed penalties. OSHA has a policy that will result 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. 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.

**Commission Membership**

Commission vacancies 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 at the Commission level, has contributed to the backlog of cases. Currently, there are 24 cases that are more than two years old.

**Nature of Cases at Commission-level**

The nature and complexity of cases at the Commission continue to have an impact on the ability to dispose of cases. At the beginning of fiscal year 2004, there were 33 cases before the Commission that were at least two years old. A number of these cases were very lengthy and complex. The Commission made substantial efforts to issue decisions in those difficult cases as well as in cases that were more than two-years old, but not as lengthy or complex. While the inventory of cases has been decreasing,<sup>2</sup> many of the cases on review involve lengthy records and complex legal matters.

**Nature of Cases at the ALJ-level**

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 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. Among the many changes implemented, were 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 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 Changes

Any regulatory or statutory changes in the Act could potentially affect the Review Commission's ability to meet the goals of this plan.

## Additional Factors

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.

## Strategic Plan Link to Annual Performance Plans

The Review Commission will formulate performance measures for the strategic goal 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 2011 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

- Develop procedures for case processing and decision quality.
- Implement changes in the agency's revised Rules of Procedures to improve case processing.

## COMMISSION-LEVEL

- 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.
- 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.
- Implement internal targets 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.
- 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.
- Develop new methods to shorten case preparation time.
- Develop case processing measures for employees assigned to cases and ensure that individual performance plans support priorities in the Review Commission's strategic and annual performance plans.

## ALJ HEARING LEVEL

- Expedite the assignment of cases to judges.
- Use objective criteria to determine complex cases and track the processing of these cases.
- Monitor closely case performance, and improve case management information systems and reports.
- Conduct early review and screening of potentially difficult 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.
- Implement the improved and expanded dispute resolution processes (i.e., Mandatory Settlement and Simplified Proceedings) to expedite case processing.
- 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 its case tracking system, the fiscal year 2004 performance report, and the agency's internal progress reports for the fiscal year 2005 performance plan. The agency also reviewed plans of other Federal adjudicative agencies during the drafting stage of our 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.

## Program Evaluation

Over the next several years the agency 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 the case management/tracking system.
- Evaluate 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.

<sup>1</sup>At any time within 30 days after the docketing date of the ALJ's report, a Commissioner may, on his own motion, direct that a Judge's decision be reviewed. In the absence of a petition for discretionary review filed by one or more of the parties, a Commissioner will normally not direct review unless the case raises novel questions of law or policy or questions involving conflict in Administrative Law Judges' decisions.

<sup>2</sup>The Commission's inventory has been decreasing. As of October 1, 2003, the Commission's inventory of pending cases consisted of 60 cases. As of October 1, 2004, the Commission's inventory of pending cases consisted of 54 cases.

[Any comments should go to [lt\\_gpo@oshrc.gov](mailto:lt_gpo@oshrc.gov) with a subject line of "strategic plan".]