

The Occupational Safety and Health Review Commission  
Strategic Plan

2009-2014

**Introduction**

The U.S. Occupational Safety and Health Review Commission (Review Commission) is committed to ensuring that all parties who come before it - employers, employees, employee representatives, and the U.S. Department of Labor - receive fair and timely resolution of safety and health disputes in American work places. Consistent with the behavior of highly effective organizations, 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 2006-2011 strategic plan focused on reducing the time it takes to dispose of cases at the Commission level. The ultimate goal, to be reached by 2011, was to dispose of each case within nine months of it being directed for review. The plan also utilized revisions to the agency's Procedural Rules to process cases more efficiently.

This updated and revised strategic plan for 2009-2014 is submitted consistent with the Government Performance and Results Act (GPRA) requirement that agencies review and update their strategic plans every three years. This updated strategic plan continues to focus on a reduction in the length of time needed to resolve cases at the Commission level, as well as introducing new strategies to expedite the handling of cases at the Administrative Law Judge (ALJ) level.

The agency's annual performance budget will set forth specific performance goals and measures including reporting of ALJ assisted settlement negotiation statistics.

**Mission Statement**

The mission of the Review Commission is to provide an impartial forum for the just and prompt adjudication of workplace safety and health disputes involving the Department of Labor, employers, and employees, and/or their representatives under the Occupational Safety and Health Act of 1970 (Act), 29 U.S.C. §§ 651-678.

**Background on the Review Commission**

The Review Commission is an independent, adjudicatory agency created by the Act. 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 OSHA has charged with violations of federal safety and health standards, and employees and/or their representatives. The Review Commission was created by Congress as an agency completely independent of the Department of Labor to ensure that OSHA's enforcement actions are carried out in accordance with the law, and that all parties are treated consistent with due process when disputes arise with OSHA.

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 ALJ. The ALJ's decision becomes a final order under the Act unless a member of the Review Commission exercises his/her discretion to direct the case for review.<sup>1</sup> The second level involves the Review Commission's review of an ALJ decision. The Review Commission has three members, appointed by the President and subject to Senate confirmation, who serve six-year terms. Both before its ALJs and the 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.

The principal (National) office of the Review Commission is located in Washington, D.C. There are also regional offices in Atlanta and Denver where additional Review Commission 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 Act;
- 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>	<ol style="list-style-type: none"><li>1. Reduce the length of time to resolve Commission-level cases</li><li>2. Increase the percent of non-complex cases at the ALJ level that are resolved in less than one year</li><li>3. Increase the use of electronic filing</li><li>4. Increase the percent of complex cases at the ALJ level that are resolved within 18 months**</li></ol>

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

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

**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, the rate at which employers choose to contest the citations issued by OSHA, the number of violations alleged in each contested citation, and the total penalties proposed by OSHA in each contested citation. Achievement of the goals in this strategic plan also 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." OSHA is also currently in the process of modifying the language of many of its standards in order to enhance its ability to seek per-instance/per-employee penalties. While the overall number of inspections varies from year to year, the number of complex cases has been growing steadily. For the Review Commission, this means that it must be prepared to receive more large and/or complex cases, consistent with OSHA's emphasis on allegedly willful, significant, and egregious violators.

**Review Commission Membership**

Review Commission member vacancies affect the agency's performance at the appellate level. The Act requires a quorum of two Commissioners and the affirmative vote of two Commissioners to decide a pending case. During periods when the Review Commission lacks a quorum, no cases can be decided, although one Commissioner can direct a case for review. With only two Commissioners, it is more difficult to reach an agreement sufficient to dispose of a pending case as both must agree on all of the issues in the matter. Over the six-year period starting with FY 2002 and ending with FY 2008, the Review Commission has been without a third Commissioner for extended periods of time. With fewer than three members, deadlocks on votes may result ("impasses"), action on important issues may be postponed, and action on pending cases may be delayed. In addition, a large and/or complex case has a greater likelihood of impasse with only two Commissioners. The result of these external factors at the Review Commission level has contributed to the agency's backlog of 11 pending cases that are more than two years old.

**Nature of Cases at the Review Commission Level**

The nature and complexity of cases at the Review Commission continues to have an impact on the agency's ability to dispose of cases expeditiously. At the beginning of fiscal year 2009, there were 11 cases before the Review Commission that were at least two years old, many of which are very lengthy and complex. While the remaining newer cases are not necessarily large, many present legal issues that are both difficult and novel, as might be expected given that the body of law developed by the Review Commission is well into its fourth decade. The Review Commission made substantial efforts in prior fiscal years to issue decisions in these difficult cases, as well as in the lengthy and/or complex cases. While the total inventory of cases has been decreasing,<sup>2</sup> the absence of a third Commissioner for extended periods of time has made it very difficult for the Review Commission to decide all pending cases and reduce its backlog.

#### Nature of Cases at the ALJ Level

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

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

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

#### **STRATEGIC PLAN OUTCOME GOALS AND PERFORMANCE PLAN MEASURES**

<b>OUTCOME GOALS*</b>	<b>PERFORMANCE MEASURES</b>	<b>FY 2014 TARGETS</b>
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 75% of cases directed for review within 12 months *** -Dispose of 100% of all priority cases within 6 months of designation
Reduce the time required to resolve non-complex cases at the ALJ level.	-Percent of non-complex cases disposed of in less than a year at ALJ level	-Dispose of 98% of non-complex cases within one year
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 Rule 60(b) cases, court remands, and interlocutory reviews.W

\*\*\* This revision will bring the Review Commission's disposition targets more in line with U.S. Court of Appeal decision timeframes.

#### **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.

#### **REVIEW COMMISSION LEVEL**

- Focus on the disposition of older cases, with the immediate aim of reducing the existing backlog and the eventual goal that a majority of cases will issue within twelve months of being directed for 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 metrics to assist in the preparation of cases and issuance of Commission decisions.
- Accelerate processing of cases through a variety of efforts, including early intervention of Commissioners' counsels, computerization of changes to draft decisions and development of strategies to resolve cases when there are only two Commission members.
- Seek and provide training opportunities to all agency attorneys and support staff on a variety of subjects, including technical and legal issues, legal writing and case management.
- 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 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.
- Create templates that report on the expanded alternative dispute resolution processes (i.e., Mandatory Settlement and Simplified Proceedings) to expedite case processing.

#### **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 2007 performance report, and the agency's internal progress reports for the fiscal year 2008 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/monitor electronic filing of legal documents.
- Evaluate the security of information technology systems and security management measures used for addressing security issues annually.
- Audit financial statements annually.

<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 the ALJ'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 decisions from the ALJs.

<sup>2</sup>As of the beginning of fiscal years 2007, 2008, and 2009, the Commission's inventory of pending cases consisted of 27, 25 and 20 cases, respectively.