

The U.S. Occupational Safety and Health Review Commission

OSHRC

FISCAL YEAR 2017

PERFORMANCE BUDGET AND JUSTIFICATION



February 2016

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I. INTRODUCTION -- MISSION, VISION, AND STRATEGIC GOALS

The U.S. Occupational Safety and Health Review Commission

Our Mission

The U.S. Occupational Safety and Health Review Commission (OSHRC or Review Commission) is an independent adjudicatory agency created by the Occupational Safety and Health Act of 1970 (the Act). Our sole statutory mandate is to serve as an administrative court providing fair and expeditious resolution of disputes involving the Occupational Safety and Health Administration (OSHA), employers charged with violations of Federal safety and health standards, and employees and/or their representatives. The Review Commission was created by Congress as an agency completely independent of the Department of Labor to ensure that OSHA's enforcement actions are carried out in accordance with the law and that parties are accorded due process.

Our Functions and Procedures

The Act and our Rules of Procedure (which are similar to the Federal Rules of Civil Procedure) provide two levels of adjudication when an employer contests an OSHA citation for alleged violations of the Act. The first is a trial level, which affords an opportunity for a hearing before a Review Commission Administrative Law Judge (ALJ or judge). The judge's decision becomes final unless it is directed for review by the Commission. When such review is granted, Commission Members (Commissioners)—who are appointed by the President and subject to Senate confirmation—address the issues presented by the case and issue a decision. Any final Commission decision may be appealed to the Federal courts of appeals. At both levels of decision the Review Commission is charged with providing fair and impartial adjudication of cases concerning the safety and health of employees' working conditions in the United States.

Our principal (National) office is located in Washington, DC. OSHRC also has two regional offices: one in Atlanta, GA, and one in Denver, CO. The regional offices are staffed with ALJs who travel, as necessary, to adjudicate cases in locales near where the alleged workplace violations took place.

Vision Statement

The Review Commission strives to be:

- A judicial body that is – and is recognized for being – objective, fair, prompt, professional, and respected.
- 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.
- An agency that values teamwork; develops its employees; and seeks to improve its performance, service, and value to the American people.

Strategic Goals

OSHRC has three overarching strategic goals:

- 1) Engendering respect for the rule of law by assuring fair, just, and expeditious adjudication of disputes brought before the Commission and its judges.
- 2) Expanding transparency and openness by providing for stakeholder engagement and ensuring that the Review Commission keeps interested parties and the public it serves informed of the agency's work at all levels, consistent with due process requirements.
- 3) Providing responsible stewardship of resources to enhance Agency operations and efficiencies in information management, financial management, human resources, and real property to accomplish the agency's statutory and regulatory mandates.

II. BUDGET REQUEST SUMMARY

Budget Request Summary

To continue our mission of adjudicating OSHA-issued workplace safety citations, the U.S. Occupational Safety and Health Review Commission requests an appropriation of \$13,411,000 to fund essential agency programs and support 66 full-time equivalent (FTE) positions in Fiscal Year (FY) 2017. The funding request would also allow us to fulfill our legislative mandate to serve as an administrative court providing fair and prompt resolution of disputes involving OSHA, employers charged with violations of Federal safety and health standards, and employees and/or their representatives. The request supports the goal in the Review Commission's Strategic Plan to improve service to the public.

In recent years, and strictly for budgetary reasons, the Review Commission's actual FTE level was lower than the estimated FTE ceiling. As a result, we rebased our FTE level to reflect a more realistic estimate in FY 2014 and FY 2015. As with our budget request for FY 2015 and FY 2016, the funding requested for FY 2017 assumes the support for 66 FTEs. This level assumes three additional FTE positions to support the ALJs in the Office of the Chief Administrative Law Judge and one additional FTE position, a supervisory attorney advisor, to support the Commission function.

Over the past few years, the Review Commission has noted an increase in the complexity of cases handled by the ALJs. We attribute this trend to two factors. First, OSHA has increasingly focused on encouraging more resource and time-intensive inspections, which can result in the issuance of more citation items. Second, the Department of Labor, Office of the Solicitor has decided to leverage litigation resources and focus less on litigating a high volume of cases in favor of litigating high-impact strategic cases. The increase in complexity of our cases challenges the Review Commission because the ALJs must invest a greater amount of time in handling those matters. And this places increased demand on the limited FTE assigned to handle cases. In addition to the increased complexity of our cases, the current level of new cases exceeds our FY 2008 levels, and the end of year inventory remains higher than previous years. In order to accomplish our mission of adjudicating OSHA-issued workplace safety citations at an acceptable pace, while avoiding the severe case backlog experienced by the Federal Mine Safety and Health Review Commission, the Occupational Safety and Health Review Commission requests an appropriation of \$13,411,000. This funding level supports essential agency programs, 66 FTE positions, as well as the continued development and implementation of our e-filing initiative discussed below.

Our FY 2017 estimated costs include:

- \$9,999,000 to support direct payroll and related costs for 66 FTE positions. These costs are approximately 75 percent of the Review Commission's budget request. This level of FTE will be used to handle the increased and more complex caseload which has developed over the past several fiscal years, especially at the ALJ level.
- \$1,485,696 for office space rent.
- \$458,107 for services provided by other Federal agencies, such as support for financial and administrative services provided by the Bureau of the Fiscal Service (BFS) and personnel and payroll services provided by the National Finance Center (NFC).
- \$377,000 to continue OSHRC's e-filing initiative.
- \$1,091,197, the remaining amount, will be used to enable the Review Commission to complete its annual performance plan goals and targets and to implement government-wide and Review Commission specific transparency initiatives. These costs include travel expenses for ALJs to hold hearings, court reporting services, managing the language access plan, the annual financial audit, the Federal Information Security Management Act (FISMA) audit, training and development of staff, and the maintenance and purchase of equipment.

E-filing Initiative

In 2013 the Review Commission began securing information technology (IT) infrastructure upgrades through the established Networkx contract to support our cloud-based initiatives including an electronic filing (e-filing) solution which will permit the electronic filing and service of litigation documents. The e-filing solution, when fully implemented, will become an essential part of an Agency-wide initiative to promote transparency, support technology improvements, and integrate business process automation to improve accuracy and efficiency in case management practices.

This initiative directly supports the Review Commission's strategic and annual performance plans, which are focused on the attainment of three separate goals: 1) Engendering respect for the rule of law by assuring fair, just, and expeditious adjudication of disputes brought before the Commission and its judges; 2) Expanding transparency and openness by providing for stakeholder engagement and ensuring that the Review Commission keeps interested parties and the public it serves informed of the agency's work at all levels, consistent with due process requirements; and 3) Providing responsible stewardship of agency resources to enhance Agency operations and efficiencies in information management, financial management, human resources, and real property to accomplish the agency's statutory and regulatory mandates.

This initiative began in August 2013, when the Review Commission held a pre-solicitation conference to encourage industry participation and involvement during the development of an e-

filing performance work statement. The Agency awarded a competitive contract in September 2013 for the preliminary stages of development of the e-filing system, using funds from an unexpected rent rebate. These FY 2013 funds were obligated to support the required exploratory stages connected with the design and implementation of an e-filing solution. The development and testing with limited licensing has provided an opportunity to encourage internal user participation during the design. This methodology is expected to facilitate a smooth roll-out of the completed system when funding for full licensing and data migration is available.

The Review Commission's FY 2017 budget request includes \$377,000 to support the e-filing initiative. This estimate includes both one-time expenses for hardware, infrastructure improvements, and system deployment costs, as well as the costs for annual services to support and maintain both the upgraded infrastructure and the e-filing system and software. Our current IT infrastructure has been enhanced to a level that will ease the transition to a cloud based solution. This baseline installation includes limited bandwidth and no redundancy. Additional funding is required to build out one additional circuit in our Denver office that can act as a backup if the main connection fails. The estimated annual cost (Trusted Internet Connections, Managed Trusted Internet Protocol Service, and bandwidth) will be \$40,000. The initial program design is complete and the next steps are to obtain sufficient licenses, secure additional user training, and effectuate migration of data from a currently maintained internal system to the cloud based solution. A detailed description of the requirements as well as the recurring annual costs for the support of the e-filing system is provided below.¹

Language Access

On February 17, 2011, the United States Attorney General issued a Memorandum For Heads of Federal Agencies, among others, regarding the Federal Government's Renewed Commitment to Language Access Obligations Under Executive Order 13166 ("AG Memo"). The AG Memo requested that each agency join the Department of Justice ("DOJ") in recommitting to the implementation of Executive Order 13166 by: 1) establishing a Language Access Working Group ("LAWG") to be responsible for implementing the Executive Order; 2) evaluating and/or updating its limited English proficiency (LEP) Plan; 3) establishing a schedule to periodically evaluate and update its LEP services, policies, plans, and protocols; 4) ensuring agency staff can competently identify LEP contact situations and take the necessary steps to provide meaningful access; 5) notifying the public of its LEP policies, plans, and procedures; 6) assessing non-English language proficiency when considering hiring criteria; and 7) collaborating with other agencies for written translations intended for mass distribution.

The Review Commission has made significant progress in the development and implementation of a Language Access Plan ("LAP") to fulfill its obligation under Executive Order 13166. In 2011, OSHRC revised its LAP to more efficiently implement key actions required by Executive Order 13166 and Title VI of the Civil Rights Act of 1964. In May 2014, responsibility for the LAP was transferred to the Office of the Chief Administrative Law Judge. A draft updated plan was developed and circulated to all judges and key Review Commission staff members for

¹ The estimate includes a one-time cost of \$377,000 for services and licenses to support the deployment of the e-filing system. This also includes maintenance of equipment necessary to support cloud computing, licenses, data migration, and enhancements to satisfy federal recordkeeping, security, and privacy requirements.

review and feedback. The Review Commission implemented the revised and updated plan in August 2014. Based on feedback received from DOJ, the LAP was revised again in November 2015. The current LAP has already been implemented by OSHRC and a copy has been forwarded to DOJ for review.

The Review Commission's goal is to ameliorate LEP as a barrier to accessing its programs and activities; consequently, the Agency is committed to taking reasonable steps through which LEP persons can meaningfully access its services consistent with its fundamental mission and existing law. To accomplish this very important goal, the FY 2017 budget request includes \$20,000 to cover services for translation of documents and interpreters for individuals with limited English proficiency.

FY 2017

Appropriations Language

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

*For expenses necessary for the Occupational Safety and Health Review Commission,
\$13,411,000.*

**III. PERFORMANCE
BUDGET
JUSTIFICATION BY
ORGANIZATIONAL
UNIT**

Performance Justification by Organizational Unit

The Review Commission has three main offices which function in concert to achieve the agency's overarching mission:

1. The Administrative Law Judge function;
2. The Commission function;
3. The Office of the Executive Director function.

Each office has staff and resources assigned exclusively to it, but all three work collaboratively to meet or exceed the Review Commission's strategic goals. This separation of staff between the ALJs and Commissioners stems principally from the nature of their functions so that each of these review levels is both in fact and appearance, independent of the other. The Office of the Executive Director function supports both the Administrative Law Judge and Commission functions and the Agency's strategic planning efforts.

Funding and staffing by function is as follows:

FUNDING (IN MILLIONS) AND FTE BY FUNCTION				
	FY2016 Enacted		FY2017 Request	
	<u>\$</u>	<u>FTE</u>	<u>\$</u>	<u>FTE</u>
Administrative Law Judge	5.3	28	5.8	28
Commission	5.5	29	5.8	29
Executive Director	1.8	9	1.8	9
Total	12.6	66	13.4	66

Administrative Law Judge Function

The front line of our agency's delivery of services to the American public rests with the ALJs. Our judges travel around the country to conduct formal hearings and related proceedings in a fair, just, and expeditious manner. The function is directly related to the public service goal of fair, just, and expeditious adjudication of disputes brought before the Review Commission and its ALJs.

The Administrative Law Judges report through the Chief Judge to the Chairman of the agency. However, they act independently in arriving at case decisions. The Review Commission's procedural rules are similar to the Federal Rules of Civil Procedure and are designed and administered to secure the just and timely determination of every contested case. In the absence of a specific Review Commission rule, the Federal Rules apply.

Proceedings before the Review Commission's Administrative Law Judges

The events leading to the presentation of an OSHA case before a Review Commission Administrative Law Judge follow an established procedure, and are designed to provide all parties with a fair hearing and swift adjudication of their case. To contest all or part of a citation, penalty, or abatement period, an employer must file a notice of contest with the Secretary of Labor within 15 working days from the receipt of the citation proposed by OSHA. The Secretary of Labor transmits the notice of contest and all relevant documents to the Review Commission's Executive Secretary for filing and docketing. After the case is docketed, it is forwarded to the Office of the Chief Administrative Law Judge for assignment to an Administrative Law Judge. The case is generally assigned to an ALJ in the Review Commission office closest to where the alleged violation occurred. Thereafter, the Administrative Law Judge has full responsibility for all pre-hearing and pre-trial procedures, and is charged with providing a fair and impartial hearing in an expeditious manner, and rendering a decision promptly.

Administrative Law Judge Operations

The Review Commission strives to expedite the judicial process in a fair and impartial manner, and to strengthen its settlement procedures and case management responsibilities by constantly monitoring its Simplified Proceedings and Mandatory Settlement programs. The Administrative Law Judge function handles a caseload that continues to grow in complexity as reflected by the increasing number and complexity of OSHA citations over the last several years.

OSHA completed 35,822 inspections in FY 2015, and estimates that it will complete 33,615 in FY 2016, and 35,352 inspections in FY 2017. Of particular importance over the last several years from the Review Commission's resources perspective has been an overall increase in the number of citations being contested, and the resulting number of contests being docketed.

In FY 2008, the Review Commission docketed 1,962 contests. In FY 2009, the Review Commission docketed an increased number of contests in comparison to FY 2008. This trend has persisted since FY 2008. Moreover, OSHA implemented a new administrative policy as of the beginning of FY 2011. As a result of this new policy, the average penalty for a serious violation increased, and the contest rate increased from seven percent in FY 2009 to eleven

percent in FY 2011 and FY 2012, contributing to the increase in our caseload. In FY 2013, the Review Commission docketed 2,215 contests. In FY 2014, the Review Commission docketed 2,017 contests, and in FY 2015 2,164 contests. While data in recent years suggests that our caseload increase is stabilizing we continue to have an inventory of challenging complex cases which require more resources and time to resolve.

Moreover, in addition to the greater number of contests that resulted from OSHA's new administrative penalty policy, OSHA's emphasis in more recent years has been on serious workplace hazards, and the consequent increase in proposed penalties has translated into more complicated cases and more costly trials (cases involving heat stress, lock-out/tag-out, workplace violence, confined spaces, health care hazards, asbestos, process safety, and construction industry hazards, etc.). Over the past few years, the Review Commission has noted an increase in the complexity of cases handled by Administrative Law Judges. We attribute this trend to two factors. First, OSHA has increasingly focused its attention on encouraging more resource- and time-intensive inspections. Second the Department of Labor, Office of the Solicitor has decided to leverage litigation resources and focus less on high volume in favor of high-impact strategic cases. The increase in complexity of cases challenges the Review Commission because Administrative Law Judges must invest a greater amount of time in handling those matters. This also places an increased demand on the limited FTE assigned to handle cases.

The complexity of these cases is the result of the existence of one or a combination of the following:

- Intricacies of the law (complex questions of law)
- 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)
- Number of alleged violations, items, and affirmative defenses (including distinct and separate items)
- Technical, novel, difficult or new issues raised
- Various types of cases, such as those involving workplace violence, heat stress, asbestos, ergonomics, and process safety management and/or confined spaces

The Review Commission is working to increase the efficiency of case processing by moving an appropriate portion of its ALJ docket into its Mandatory Settlement Part and Simplified Proceedings programs, both of which are innovative methodologies to speed the settlement or adjudication of pending cases. During FY 2011, the Review Commission began an evaluation of its current Mandatory Settlement Part program to ascertain whether even greater improvement in this settlement process can be achieved. This evaluation, "Dispute Resolution in the Administrative Process: Evaluation of the Occupational Safety and Health Review Commission

Settlement Part Program,” was completed in FY 2013 by alternative dispute resolution experts at the Indiana University School of Public & Environmental Affairs. The evaluation declared the Agency’s dispute resolution program to be “successful” and noted that OSHRC “has done an admirable job addressing an increased caseload within constrained resources while at the same time meeting the expectations of its external stakeholders.” With the higher caseload levels of recent years, Mandatory Settlement Part has been an important tool in avoiding a backlog of cases at the ALJ level. The Commission has reviewed the specific suggestions for improvement contained in the evaluation. In particular, the evaluation recommended that the Commission provide “training and regular continuing legal education in mediation and dispute resolution to every ALJ who is expected to serve as a settlement judge.” The Review Commission agreed with this recommendation and as a result developed an ALJ training performance goal in our Strategic Plan, FY 2014 - FY 2018.

Under Commission Rule 120, 29 C.F.R. § 2200.120, and where the parties consent, the Chief Administrative Law Judge may assign a Settlement Judge to a pending proceeding to aid the parties in disposing of the case. Where the aggregate amount of the penalty sought by the Secretary of Labor is \$100,000 or greater, the Mandatory Settlement procedure goes into effect. The Settlement Judge appointed by the Chief Administrative Law Judge has full control of the proceeding and may require that the parties’ representatives be accompanied at the settlement conference by officials having full settlement authority. This procedure has aided the Commission in disposing of some extremely complex cases, with the approval of all parties. (If settlement efforts are not successful, the case may be assigned to a different judge for trial.)

The Simplified Proceedings process includes cases where the total proposed penalty is not more than \$20,000, or up to \$30,000, when found eligible by the Chief Judge. The Simplified Proceedings process allows parties with relatively simple cases to have their “day in court” unencumbered by formal procedural and evidentiary rules, while ensuring that due process requirements will be maintained. Under this process, a business, with or without counsel, can present its case before an ALJ and receive a prompt decision. Most paperwork, including legal filings, has been eliminated so that justice can be rendered swiftly and inexpensively. The process reduces the time and legal expenses to employers contesting relatively small penalty cases.

In FY 2015, approximately 27 percent of new cases were assigned to Simplified Proceedings. The Review Commission projects that approximately 30 percent of new cases will be assigned to the Simplified Proceedings process in FY 2016 and 30 percent in FY 2017.

Simplified Proceedings Case Activity

FY 2012 through FY 2017

	<u>FY 2012</u> <u>Actual</u>	<u>FY 2013</u> <u>Actual</u>	<u>FY 2014</u> <u>Actual</u>	<u>FY 2015</u> <u>Actual</u>	<u>FY 2016</u> <u>Estimate</u>	<u>FY 2017</u> <u>Estimate</u>
New Cases	2,696	2,215	2,017	2,164	2,500	2,500
Cases assigned to Simplified Proceedings	1,571	919	708	586	750	750

Anticipated Administrative Law Judge Workload for FY 2017

Four major factors impact the ALJs' workload: (1) the quantity, magnitude, and nature of the cases; (2) the utilization of the Simplified Proceedings process; (3) the time, effort and complexity of cases assigned to the Mandatory Settlement process; and (4) the number of trials held, and their length and complexity.

The number of OSHA inspections and their focus also affects the Review Commission's caseload. In particular, inspections of high hazard workplaces - especially those with high injury and illness rates, fatalities, repeat offenders, and egregious violations - generally result in larger contestable proposed penalties. These inspections tend to result in more complex and contentious cases, which consume extensive time. The discovery process is lengthy and time consuming, motion practice is expanded, legal research and decision-writing time is protracted and, of necessity, the trial process is elongated and complicated.

The following table provides actual Administrative Law Judge workloads for fiscal years 2012 through 2015, and estimated workloads for fiscal years 2016 and 2017.

	FY 2012 <u>Actual</u>	FY 2013 <u>Actual</u>	FY 2014 <u>Actual</u>	FY 2015 <u>Actual</u>	FY 2016 <u>Estimate</u>	FY 2017 <u>Estimate</u>
OSHA Inspections*:	40,961	39,228	36,163	35,822	33,615	35,352
Administrative Law Judge Workload:						
A. Case Inventory, Start of Year	1,345	1,154	909	888	1,099	1,044
B. New Cases	2,696	2,215	2,017	2,164	2,500	2,500
C. Total Caseload	4,041	3,369	2,926	3,052	3,599	3,544
D. Disposals**						
(1) With Hearing	95	68	50	61	75	75
(2) Mandatory Settlement Conferences		81	66	56	80	85
(3) Without Hearing	2,792	2,311	1,922	1,836	2,400	2,400
E. Total Dispositions	2,887	2,460	2,038	1,953	2,555	2,560
Total Case Inventory, End of Year	1,154	909	888	1,099	1,044	984

*Provided by OSHA

**In prior budget presentations, the category "With Hearing" included both adjudicatory hearings and mandatory settlement conference hearings. To improve transparency and accuracy, adjudicatory hearings and mandatory settlement conference hearings are now reported separately starting with FY 2013.

Staffing

The Office of the Chief Administrative Law Judge requires 28 FTE positions in FY 2017 to support the workload based on OSHA's planned inspections and contest rates in the coming years, and to meet performance targets, given the number and complexity of the cases anticipated.

The Chief Administrative Law Judge manages the effort to meet the Agency's GPRA goals at the Administrative Law Judge level.

The Chief Administrative Law Judge:

- Reviews and screens all docketed cases, determines the level of complexity and assigns each to an Administrative Law Judge;
- Exercises strong management and monitors the progress of cases in order to ensure that performance goals are met;
- Supervises judicial and administrative staff, and ensures that they receive appropriate training to perform their responsibilities; and
- Examines judicial case management practices of other entities to ensure that OSHRC's procedures are as efficient as possible.

	<u>FUNDING (IN MILLIONS) AND FTE</u>			
	<u>FY 2016 Enacted</u>		<u>FY 2017 Request</u>	
	<u>\$</u>	<u>FTE</u>	<u>\$</u>	<u>FTE</u>
Administrative Law Judge Function	5.3	28	5.8	28

Strategic Plan and Outcome Goals

The Review Commission’s Strategic Plan for 2014 – 2018 includes the following goals and outcomes related to this function:

<u>Public Service Goal</u>	<u>Outcome Goals</u>
<i>Respect for the rule of law by assuring fair, just, and expeditious adjudication of disputes brought before the Review Commission and its Judges.</i>	<ul style="list-style-type: none"> • Ensure that a significant proportion of both complex and non-complex cases at the Administrative Law Judge level are resolved within one year to 20 months from docketing. • Improve training opportunities for Administrative Law Judges.

The Office of the Chief Administrative Law Judge will advance this strategic goal through the following strategies:

- Expedite the assignment of cases to judges.
- Use objective criteria to designate complex cases and track the processing of these cases.
- Closely monitor case performance, and improve case management information systems and reports.
- Conduct early review and screening of potentially complex cases to expedite the disposition of such cases.
- Implement appropriate changes in the agency’s Rules of Procedure to improve case processing (e.g., Mandatory Settlement Part and Simplified Proceedings), and seek new alternative dispute resolution (ADR) methods.
- Provide training to all judges on a variety of subjects, including technical and legal issues, legal writing, case management, and ADR to help them develop services and processes equal to the very best in judicial arenas.
- 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.

In accordance with Public Law 111-352, the Government Performance and Results Modernization Act of 2010 (GPRA Modernization Act of 2010) and Public Law 103-62, the Government Performance and Results Act (GPRA) of 1993, the Review Commission revised its strategic plan for the period FY 2014 through FY 2018. The revised plan focuses on the three overarching goals of 1) Respect for the rule of law; 2) Expanding transparency and openness; and 3) Responsible stewardship of Agency resources. It also identifies innovative and

comprehensive strategies to achieve the strategic goals and objectives. The following are the performance goals for the Office of the Chief Administrative Law Judge for fiscal years 2013 through 2017:

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 Actual (Target)	FY 2016 (Target)	FY 2017 (Target)
Ensure that a significant proportion of non-complex cases at the ALJ level are resolved in less than one year.	Percent within one year.	95.3% Target not met (98%)	97% Target met (95%)	New Goal developed for FY 2015	New Goal developed for FY 2016	New Goal developed for FY 2017
Ensure that a significant proportion of complex cases at the ALJ level are resolved in less than one year.	Percent within one year.	85.6% Target not met (95%)	80% Target not met (89%)	New Goal developed for FY 2015	New Goal developed for FY 2016	New Goal developed for FY 2017
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. *	-Percent of simplified cases disposed of within one year at ALJ level. -Percent of conventional cases disposed of within 17 months. -Percent of settlement part cases disposed of within 19 months. -Percent of complex cases disposed of within 20 months at ALJ level.	New goal developed to support FY 2014 – 2018 Strategic Plan	New goal developed to support FY 2014 – 2018 Strategic Plan	-Dispose of 95% of simplified cases within one year. 97% Target met -Dispose of 90% of conventional cases within 17 months. 92% Target met -Dispose of 98% of settlement part cases within 19 months. 95% Target not met -Dispose of 95% of	-Dispose of 95% of simplified cases within one year. -Dispose of 90% of conventional cases within 17 months. -Dispose of 98% of settlement part cases within 19 months. -Dispose of 92% of complex cases within 20 months. (FY 2015 was the baseline year for this	Dispose of 95% of simplified cases within one year. -Dispose of 90% of conventional cases within 17 months. -Dispose of 98% of settlement part cases within 19 months. -Dispose of 92% of complex cases within 20 months.

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 Actual (Target)	FY 2016 (Target)	FY 2017 (Target)
				complex cases within 20 months. (FY 2015 will be the baseline year for this measure) 80% Target not met	measure)	
Improve training opportunities for Administrative Law Judges.	Time and resources dedicated to judicial training with special emphasis on mediation and dispute resolution.	New goal developed to support FY 2014 – 2018 Strategic Plan	Pro rata share of the Agency’s training resources were devoted. Target met (Pro rata share of the Agency’s training resources)	Pro rata share of the Agency’s training resources were devoted. Target met (An appropriate allocation of time and resources reflective of the number of ALJs)	Continue to designate a pro rata share of the Agency’s training resources	Continue to designate a pro rata share of the Agency’s training resources
Publish significant procedural decisions and non-dispositive orders separately from other decisions.	Key decisions and orders published within 4 months of the order.	New goal developed to support FY 2014 – 2018 Strategic Plan	11 key decisions and orders published Target not met (15 key decisions and orders published)	13 key decisions and orders published Target not met (20 key decisions and orders published)	20 key decisions and orders published	20 key decisions and orders published

*Except for mandatory settlement cases, which are assigned by the Chief Judge upon receipt from the Executive Secretary’s Office, 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.

The Review Commission is evaluating the factors that impact the timeframe by which complex cases are resolved by the Office of the Chief Administrative Law Judge to determine if the current outcome goal is a fair standard by which resolution should be measured. In FY 2015, two factors adversely impacted OCALJ's ability to meet the targeted outcome goal. First, the office, which includes Denver and Atlanta, was significantly understaffed due to inadequate legal support. Existing legal staff, which included four attorneys and nine legal assistants, proved inadequate to meet the administrative and legal writing needs of the full complement of ALJs. The shortage of administrative and legal support resulted in significant delays in issuing decisions and resolving cases. Absent additional support (e.g., legal research and writing), the downturn in performance at the ALJ level with respect to the disposition of complex cases may continue. This budget request includes funding for the three additional positions requested in FY 2016 to provide legal support to OCALJ.

Next, the complexity of the cases increased the time required to resolve cases at the ALJ level. Factors leading to the increased complexity of cases include OSHA's focus on encouraging more resource and time-intensive inspections, as well as the Department of Labor, Office of the Solicitor's decision to leverage litigation resources and focus away from high volume and in favor of high-impact strategic cases. The increase in complexity of cases is a challenge for the Review Commission because processing such cases requires the judges to invest a greater amount of time in handling the matters, and places an increased demand on the limited FTE assigned to handle the volume of cases.

Commission Function

OSHC's Commissioners are appointed by the President and confirmed by the Senate, and serve as an appellate level of review. The Commissioners review and decide cases contested under the Act, following an initial decision by an ALJ. This appellate level of review must be prompt, fair, and protective of the parties' rights.

Proceedings before the Commission

The Commissioners adjudicate contested cases independently from the enforcement and rule-making functions vested in OSHA. Disputed enforcement proceedings are tried initially before the Review Commission's Administrative Law Judges. The Commission members may then review an ALJ's decision.

The Act provides for Presidential appointment and Senate confirmation of three Commissioners, each with a six-year term. The Commissioners sit as an appellate review body to review any case decided by the Review Commission's Administrative Law Judges. Each Commission member has the discretionary authority to direct for review by the full Commission any case decided by any Judge. Absent such a direction for review, the decisions of the ALJs become a final order of the Review Commission by operation of law. Once a case is directed for review, the Commission members have authority to review all aspects of a case, including the judge's findings of fact, conclusions of law, penalty assessments and abatement orders.

Each Commissioner has a counsel who is responsible for providing assistance and advice on all pending matters, including the proper disposition of cases and motions, and whether cases are appropriate for Commission review. Each counsel also aids the Commissioner in researching and editing draft opinions submitted by the Office of the General Counsel (OGC) after the Commission decides a case.

OGC provides legal advice and assists the Review Commission in complying with the various laws, regulations and executive orders governing its operations. OGC has primary responsibility for preparing and presenting factual and legal analyses to assist Commission members in adjudicating appeals, and also provides legal advice on ethics, Freedom of Information Act (FOIA), Equal Employment Opportunity (EEO), procurement, appropriations, Privacy Act and other areas.

The Commission function also includes the work of the Commission's Executive Secretary, who is responsible for the docketing of cases at both the ALJ and Commission levels and serves as the Records Management Officer for the Agency in coordination with the National Archives and Records Administration (NARA).

Commission Operations

The Commissioners strive to minimize the time for deciding cases. Aided by improved case management technology, the Commission seeks to strengthen the internal processes by which a case is prepared for decision. Three external factors that have a major impact on the operations

of the Commission are: the presence of a quorum, the size and complexity of cases, and the novelty of the issues presented for review.

The Act requires a quorum of two Commissioners to take official action, so decisions require the affirmative vote of two Commissioners. During periods when the Commission lacks a quorum, no cases can be decided. If there are only two Commissioners, it may be more difficult to reach agreement sufficient to dispose of some cases. In cases where such agreement cannot be reached, deadlocks result, and action on important issues and issuance of some pending cases may be delayed.

The Commission operated with three Commissioners during only 7 months of FY 2015. This was the result of one Commissioner's term expiring in April of 2015. Notwithstanding the lack of a full complement of Commissioners for almost half of the fiscal year, the Commission resolved 16 cases during FY 2015 and met the GPRA goal targets for FY 2015 at the Commission level.

Historically, 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 all have an impact on the number of cases before the Review Commission. In addition, OSHA's emphasis during recent years on more serious workplace hazards and the consequent increase in proposed penalties has translated into more complicated cases, and longer, more costly trials. Consequently, the complexity and size of the cases at the ALJ and at the Commission levels have increased significantly in recent years.

Anticipated Commission Workload for FY 2017

The Commission focuses on solid case production, including deciding and issuing decisions in older cases in an effort to reduce case inventory. However, the cases that are going to hearings before the Review Commission's ALJs are becoming more complex (e.g., imposition of higher penalties and/or more complex technical issues), which may result in a higher percentage of cases being petitioned for review.

In FY 2015, the Commission had 35 cases pending on its docket at the beginning of the year. It received 13 new cases and resolved 16 cases by year-end. Thus, the Commission entered FY 2016 with 33 cases pending review. During FY 2016, the Commission estimates receiving 28 new cases and resolving 27 cases, ending FY 2016 with 34 cases pending review. For FY 2017, the Commission anticipates receiving 28 new cases and disposing of 27 cases, ending that year with an inventory of 35 cases.

	FY 2012 <u>Actual</u>	FY 2013 <u>Actual</u>	FY 2014 <u>Actual</u>	FY 2015 <u>Actual</u>	FY 2016 <u>Estimate</u>	FY 2017 <u>Estimate</u>
New Cases:						
Cases Directed for Review:	14	24	11	13	24	24
Other New Cases:						
Interlocutory Appeals	2	0	0	0	2	2
Remands	3	1	0	1	2	2
Other	0	0	0	0	0	0
Total Other New Cases:	5	1	0	1	4	4
Total New Cases:	19	25	11	14	28	28
Case Inventory from Prior Year:	35	31	36	35	33	34
Total Caseload:	54	56	47	49	61	62
Dispositions:	23	20	12	16	27	27
Case Inventory, End of Year:	31	36	35	33	34	35

Staffing

The Commission function requires 29 FTE positions in FY 2017. This includes 9 FTE positions for the three Commissioners and their immediate staff, 15 FTE positions for the Office of General Counsel (including one additional FTE position requested in FY 2016, a supervisory attorney advisor) and 5 FTE positions for the Office of the Executive Secretary.

<u>FUNDING (IN MILLIONS) AND FTE</u>				
Commission Function	<u>FY 2016 Enacted</u>		<u>FY 2017 Request</u>	
	<u>\$</u>	<u>FTE</u>	<u>\$</u>	<u>FTE</u>
	5.5	29	5.8	29

Strategic Plan and Outcome Goals

The Review Commission’s Strategic Plan for 2014 - 2018 includes the following goals and outcomes related to this function:

<u>Public Service Goal</u>	<u>Outcome Goal</u>
<i>Respect for the rule of law by assuring fair, just, and expeditious adjudication of disputes brought before the Review Commission and its Judges.</i>	<ul style="list-style-type: none"> • Develop and implement case management practices that will minimize the average age of all pending Commission-level cases.* • Further reduce the average age of the oldest pending Commission level cases. ** • Resolve all priority cases in a timely manner. ***

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

**The Commission intends to further reduce the average age of the oldest fifteen (15%) percent of pending cases. External factors, such as lack of a quorum or recusal of a Commissioner, may adversely affect the Commission’s ability to meet these goals.

***Priority 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—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.

The Commission will advance its strategic goal through the following strategies:

- Focus on reducing the average age of the oldest pending cases and of all pending cases, with immediate aim of implementing the new case management practices adopted at the end of FY 2014:
 - Periodic docket review
 - Conduct quarterly and semiannual case management docket reviews to identify opportunities to speed case processing
 - Quarterly Counsel’s meeting
 - Semiannual Commission docket review

- Strategic Plan implementation monitoring
 - Incorporate data in quarterly docket reports on the age of each pending case, the average age of all pending cases, and the average age of the oldest 15% of cases.
 - Review case management aspects of cases that exceed the target average in the periodic docket review meetings.
- Efficient briefing practices
 - To the degree practicable, strive to narrowly tailor the issues in the Briefing Notice.
- Expedite the disposition of priority cases that are designated as requiring rapid action (e.g., court remands, interlocutory reviews, and Rule 60(b) cases), such that they are disposed of within six months of designation.
- Expand knowledge management and research tools to accelerate the preparation of cases and issuance of Commission decisions.
- Identify and provide training opportunities to all agency attorneys and support staff that will enhance their capabilities, such as training on technical and legal issues, legal writing, ethics, and technology and case management.
- Use individual performance plans that support priorities in the Review Commission's strategic and annual performance plans.
- Assign teams of attorneys and other staff to large, complex cases to speed their preparation and issuance.
- Implement appropriate changes to the Agency's procedures to improve case processing at the Commission level.

In accordance with Public Law 111-352, the Government Performance and Results Modernization Act of 2010 (GPRA Modernization Act of 2010) and Public Law 103-62, the Government Performance and Results Act (GPRA) of 1993, the Review Commission revised its strategic plan for the period FY 2014 through FY 2018. The revised plan focuses on the three overarching goals of 1) Engendering respect for the rule of law; 2) Expanding transparency and openness; and 3) Providing responsible stewardship of Agency resources. It also identifies innovative and comprehensive strategies to achieve the strategic goals and objectives. The following are the performance goals for the Commission for fiscal years 2013 through 2017:

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 Actual (Target)	FY 2016 (Target)	FY 2017 (Target)
Reduce the average age of open cases at the Commission-level.	Average age of open cases.	21 months Target met (30 months or less)	26 months Target met (27 months or less)	Replacement Goal developed for FY 2015	Replacement Goal developed for FY 2016	Replacement Goal developed for FY 2017
Resolve all priority cases in a timely manner.	Percent of priority cases disposed of within 6 months.	100% Target met (100%)	100% Target met (100%)	(100%) Target met (100%)	(100%)	(100%)
Develop and implement case management practices that will minimize the average age of all pending Commission-level cases.	Average age of all pending Commission-level cases.	New goal developed to support FY 2014 – 2018 Strategic Plan	Case management practices developed. The average age of all pending Commission-level cases is 26 months. *Target met Develop case management practices. (27 months or less)	Implemented case management practices. The estimated average age of all pending Commission-level cases is 21 months. Target met (24 months or less)	Continue to implement case management practices (23 months or less)	Continue to implement case management practices (22 months or less)

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 Actual (Target)	FY 2016 (Target)	FY 2017 (Target)
Further reduce the average age of the oldest pending Commission level cases.	Using experience gained from the recent disposition of the legacy cases, as well as recommendations derived from Commission's public meeting on legacy cases, to develop and implement case management practices that minimize the average age of the oldest fifteen (15%) percent of pending cases	New goal developed to support FY 2014 – 2018 Strategic Plan	Case management practices developed. Target met (Develop case management practices)	Case management practices were fully implemented. Target met (Implement case management practices).	Reduce average age of the oldest 15 percent of pending Commission level cases by 10 percent from FY 2013 level.	Reduce average age of the oldest 15 percent of pending Commission level cases by 10 percent from FY 2014 level.

*As of September 30, 2009, the average (mean) period of time for a case on the Review Commission's docket was 46 months. The Review Commission's Strategic Plan for FY 2014 - 2018 anticipated reducing this average to 24 months by the end of FY 2015.

Office of the Executive Director Function

The Office of the Executive Director provides administrative support services for the entire Review Commission to assure success in fulfilling its mission.

Administrative Operations

The Executive Director function provides operational management for the agency, including procurement, information technology management, human resources management, budget and financial management, and administrative services. The day-to-day tasks of this office are led by the Executive Director and include:

- Supporting the development and implementation of the Agency's strategic goals;
- Maintaining and enhancing a website to provide the public with greater access to Review Commission information;
- Providing agency-wide support in the areas of finance, budget, procurement and contracting, human resources, equal opportunity and general administrative services;
- Providing personnel, payroll, benefits, reproduction, and mail services, and travel assistance to agency employees;
- Procuring goods and services, maintenance and needed repairs of equipment, training, reference materials, supplies and office space;
- Implementing case management and administrative systems through IT hardware and software;
- Developing and maintaining computer systems and information security enhancements; and
- Enhancing telecommunications and improving technology efficiency and effectiveness.

Anticipated Office of the Executive Director Workload for FY 2017

During FY 2017, Office of the Executive Director staff will:

- Implement the Administration's government-wide performance initiatives;
- Improve financial and administrative services and enhance integrity and efficiency of the Agency's financial management and human resources programs;
- Provide greater online access to information generated by OSHRC to citizens and other interested parties as a part of the Review Commission's transparency initiatives;

- Provide faster and better public access to and dissemination of Review Commission information and decisions through the use of modern automated technology and techniques, including the Agency's website;
- Improve computer information security based on an evaluation of the Review Commission's computer security, compliance with the various security acts and the implementation of corrections or improvements in any weaknesses found as a result of evaluations;
- Execute the Continuity Of Operations Plan (COOP) including maintenance, testing, and (if needed) implementation of the COOP for Washington, DC and the regional offices in Denver and Atlanta;
- Make use of best knowledge management practices to ensure that employees are better prepared to perform their work, and to provide for continuity and succession planning; and
- Review information technology programs to determine ways to achieve cost savings.

In FYs 2015 and 2016, the Review Commission plans to further improve the quality of its web-based transparency initiatives, including enhancing the OSHRC website to make more information available to internal and external customers, revising our COOP, and undertaking other activities in support of our mission. In FY 2013, we began exploring necessary enhancements to our existing information technology (IT) infrastructure that would support cloud-based initiatives including an electronic platform that would accommodate the filing and service of documents. The e-filing work circle, which was led by senior agency officials including the Chief Administrative Law Judge, Executive Director and Chief Information Officer, concluded that the implementation of an automated system to file and access case information including litigation documents should be explored. Based on this recommendation, the Agency awarded a competitive contract in September 2013 for the preliminary stages of development, deployment and implementation of an e-filing system.

This budget request includes the funding necessary to acquire necessary licensing to fully support the e-filing system initiative. The selected vendor has been working with Review Commission personnel to provide a solution that would accommodate our unique requirements utilizing its commercial off-the-shelf Fed RAMP certified solution. We began the infrastructure upgrade using vendors from the General Services Administration's information technology schedule. This budget request includes funds to fully implement the e-filing solution and to remediate any issues that are likely to arise after initial deployment. The successful implementation and management of this e-filing system will be demonstrative proof of the Agency's commitment to using technology to improve accuracy and efficiency in its case management practices.

Staffing

The Office of the Executive Director requires 9 FTE in FY 2017. The Office has responsibility for implementing the Administration’s performance improvement efforts, including implementing and monitoring strategic and performance plans and reports, budget and performance integration, human capital development and E-government.

<u>FUNDING (IN MILLIONS) AND FTE</u>				
	<u>FY 2016 Enacted</u>		<u>FY 2017 Request</u>	
	<u>\$</u>	<u>FTE</u>	<u>\$</u>	<u>FTE</u>
Executive Director Function	1.8	9	1.8	9

Strategic Plan and Outcome Goals

The Office of the Executive Director’s responsibilities include implementation of and/or providing Strategic Plan guidance for the following goals and outcomes:

<u>Public Service Goal</u>	<u>Outcome Goals</u>
<i>Expanding transparency and openness by providing for stakeholder engagement and ensuring that the Review Commission keeps interested parties and the public it serves informed of the agency’s work at all levels, consistent with due process requirements.</i>	<ul style="list-style-type: none"> • Ensure that the Review Commission’s website is accessible to people with disabilities and serves as a useful repository for information about the agency and its adjudicatory activities. • Produce timely and accurate reports on the Review Commission’s activities, including all reports required by law. • Enhance the agency’s FOIA processing system by developing internet-based capabilities. • Broaden the Review Commission’s outreach activities with other Federal agencies and the affected public, including targeted education and outreach for individuals with limited English proficiency (LEP).

<p><i>Responsible stewardship of Agency resources to enhance operations and efficiencies in information technology, financial management, human resources, and real property to accomplish the agency's statutory and regulatory mandates.</i></p>	<ul style="list-style-type: none"> • Develop and present an annual budget and performance plan that clearly present how the organization will accomplish government-wide management priorities, agency-wide goals, and organizational goals. • Implement a comprehensive human capital plan designed to recruit, retain and develop staff; support succession planning by strategically aligning present and future human capital needs and workforce planning; and evaluate the performance management system based on individual and organizational effectiveness. • Integrate knowledge management processes into a plan to capture, share and generate knowledge and establish a unified knowledge network of people, processes and technology to enhance operations and efficiencies in all aspects of essential Agency operations. • Improve technology infrastructure through efficiencies and investments (e.g., training, equipment, and services) to support the effective use of broadband, cyber security, and energy efficiency. • Use existing and real property more effectively by implementing energy efficiency practices, space alignment efforts (e.g., sustainability) and expanding telework.
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In accordance with Public Law 111-352, the Government Performance and Results Modernization Act of 2010 (GPRA Modernization Act of 2010) and Public Law 103-62, the Government Performance and Results Act (GPRA) of 1993, the Review Commission revised its strategic plan for the period FY 2014 through FY 2018. The revised plan focuses on the three overarching goals of 1) Respect for the rule of law; 2) Expanding transparency and openness; and 3) Responsible stewardship of Agency resources. It also identifies innovative and comprehensive strategies to achieve the strategic goals and objectives. OSHRC's Strategic Plan includes the following goals for the Office of the Executive Director for fiscal years 2013 through 2017:

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 Actual (Target)	FY 2016 (Target)	FY 2017 (Target)
Ensure that the Review Commission's website is accessible to people with disabilities and serves as a useful repository for information about the agency and its adjudicatory activities	Timeliness of postings to agency web site	New goal developed to support FY 2014 – 2018 Strategic Plan	All required material posted to the website in less than 7 days and usually within one day after issuance. Target met (All material posted no later than 7 days after issuance)	All required material posted to the website in less than 7 days and usually within one day after issuance. Target met (All material posted no later than 7 days after issuance)	All material posted no later than 7 days after issuance	All material posted no later than 7 days after issuance
Produce timely and accurate reports on the Review Commission's activities, including all reports required by law	Timeliness of submissions of required reports, e.g., financial statements, OMB, OPM, and EEO reports, etc.	New goal developed to support FY 2014 – 2018 Strategic Plan	All material submitted by required deadlines. Target met (100% of all material to be submitted by required deadlines)	All material submitted by required deadlines. Target met (100% of all material to be submitted by required deadlines)	100% of all material to be submitted by required deadlines	100% of all material to be submitted by required deadlines
Broaden the Review Commission's outreach activities with other Federal agencies and the affected public, including targeted education and outreach for individuals with limited English proficiency (LEP)	Participation in professional conferences and meetings and strategic engagement with stakeholders	New goal developed to support FY 2014 – 2018 Strategic Plan	Agency focus was to revise the draft language access plan and submit to DOJ for approval. Target not met (Agency to sponsor one outreach and educational activity per year)	Draft language access plan was posted on the Agency's website. Target met (Fully implement a language access plan and post to the Agency's website for public access)	Review documents to be translated and posted on the Agency's website	Review documents to be translated and posted on the Agency's website

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 Actual (Target)	FY 2016 (Target)	FY 2017 (Target)
Develop and present an annual budget and performance plan that clearly present how the organization will accomplish government-wide management priorities, agency-wide goals, and organizational goals	System that links resources to specific activities that support measurable programmatic outcomes and objectives	New goal developed to support FY 2014 – 2018 Strategic Plan	Resources were identified for various programs to support the methodology to efficiently align the budget with program goals. Target met (Identify resources to support the methodology to efficiently align the budget with program goals)	Agency program goals were aligned with the budget to efficiently accomplish the mission. Target met (Align budget with Agency program goals to efficiently accomplish mission (e.g., program, human capital, procurement, IT infrastructure, and space and facilities))	Align budget with Agency program goals to efficiently accomplish mission (e.g., program, human capital, procurement, IT infrastructure, and space and facilities)	Align budget with Agency program goals to efficiently accomplish mission (e.g., program, human capital, procurement, IT infrastructure, and space and facilities)

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 Actual (Target)	FY 2016 (Target)	FY 2017 (Target)
Implement a comprehensive human capital plan designed to recruit, retain and develop staff; support succession planning by strategically aligning present and future human capital needs and workforce planning; and evaluate the performance management system based on individual and organizational effectiveness	Increase personnel capabilities and development by improving training opportunities	New goal developed to support FY 2014 – 2018 Strategic Plan	.55 of basic payroll was devoted to staff training and development. Target met (.55 percent of basic payroll devoted to staff training and development)	.44 percent of basic payroll devoted to staff training and development. *Target not met (.65 percent of basic payroll devoted to staff training and development)	.70 percent of basic payroll devoted to staff training and development	.80 percent of basic payroll devoted to staff training and development

*The Review Commission devoted .44 percent of basic payroll to staff training and development. However, our ability to expend .65 percent was severely impacted due to a nearly three month Continuing Resolution and severe budget constraints that were implemented during FY 2015 to avoid employee furloughs.

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 Actual (Target)	FY 2016 (Target)	FY 2017 (Target)
Integrate knowledge management (KM) processes into a plan to capture, share and generate knowledge and establish a unified knowledge network of people, processes and technology to enhance operations and efficiencies in all aspects of essential Agency operations	<p>Conduct periodic knowledge audits to identify sources of knowledge and “at risk” knowledge gaps**</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>	New goal developed to support FY 2014 – 2018 Strategic Plan	<p>Staff trained in learning solution designed to optimize organizational performance and identify KM gaps.</p> <p>Target partially met (Design the knowledge management audit to establish benchmarks to evaluate knowledge gaps in the essential Agency operations and programs)</p>	<p>Identified knowledge gap vulnerabilities to enhance Agency operations and programs.</p> <p>Target met (Use findings from evaluation of knowledge management audit to identify and address knowledge gaps)</p>	Evaluate the effectiveness of the Phased Retirement HR initiative.	Evaluate and address knowledge management vulnerabilities to further enhance Agency operations and programs.

**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.

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 Actual (Target)	FY 2016 (Target)	FY 2017 (Target)
Improve technology infrastructure through efficiencies and investments (e.g., training, equipment, and services) to support the effective use of broadband, cyber security, and energy efficiency	Streamline operations and infrastructure to eliminate duplication; minimize servers, storage and application sprawl Maintain standardized platforms including hardware and software Improve network/communications to ensure customers can access necessary information without delay	New goal developed to support FY 2014 – 2018 Strategic Plan	Evaluated expanding the existing IT infrastructure and began procuring equipment and services necessary to support the e-filing initiative. Target met (Evaluate expanding the existing IT infrastructure to support e-filing initiative)	Upgraded data circuits, implemented a new data analysis platform that scans internet traffic, trained staff on usage policies, and procured and installed Host servers. Target met (Implement recommended IT infrastructure upgrades identified in evaluation)	Continue monitoring technology infrastructure to determine if additional resources are required	Continue monitoring technology infrastructure to determine if additional resources are required
Use existing real property more effectively by implementing energy efficiency by implementing energy practices, space alignment efforts (e.g., sustainability) and expanding telework	Implement measures to reduce operating expenses when negotiating lease and develop a system to evaluate areas of consumption that impact sustainability	New goal developed to support FY 2014 – 2018 Strategic Plan	-Use of virtual machines and all equipment purchases meet EPA Energy Efficiency standards. Target met (Establish goal of acquiring a percentage of supplies and equipment from eco-friendly sources) -Disposed of equipment through certified recyclers.	Use of virtual machines and all equipment purchases meet EPA Energy Efficiency standards. Moved to a shared printing environment by using installed copiers as default printers moving away from desktop printers. Expanded Citrix to accommodate additional telework staff.	Continue monitoring to ensure supplies and equipment are procured from eco-friendly sources	Continue monitoring to ensure supplies and equipment are procured from eco-friendly sources

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2013 Actual (Target)	FY 2014 Actual (Target)	FY 2015 Actual (Target)	FY 2016 (Target)	FY 2017 (Target)
			Target met (Dispose of equipment in an environmentally friendly manner)	Target met (Increase the percentage of supplies and equipment procured from eco-friendly sources)		
Enhance the agency's FOIA processing system by developing internet-based capabilities	Development of an electronic form and/or request tracking capability	New goal developed to support FY 2014 – 2018 Strategic Plan	Developed an electronic request form used for processing and expediting FOIA requests. Target met (Assessment of tools and resources necessary for processing and expediting FOIA requests electronically)	Successful implementation of FOIA online form and use of dedicated FOIA email address to expedite receipt, tracking, and processing of requests. Target met (Develop tools to be used for processing and expediting FOIA requests electronically)	Evaluate and monitor use of online FOIA request form; explore options for online tracking capability	Explore advanced options for online tracking capability

**IV. BUDGET BY OBJECT
CLASSIFICATION
CATEGORY**

Budget by Object Classification (BOC) Category

The U.S. Occupational Safety and Health Review Commission requests an appropriation of \$13,411,000 for FY 2017 to continue our mission of adjudicating OSHA-issued workplace safety citations. The requested amount assumes the support for 66 FTE positions as well as funding for other costs.

The proposed budget for FY 2017 by object classification category is shown in the table below, along with the FY 2016 Enacted Appropriation. A narrative explanation of the amount requested for each object classification follows the table.

Object Classification Table

Fiscal Years 2016 and 2017
(Dollars in Thousands)

Budget Object Class		FY 2016 Enacted	FY 2017 Request	Change FY 2016 Enacted – FY 2017 Request	
				\$	%
11.0	Personnel Compensation	\$7,385	\$7,823	+438	+5.93
12.0	Personnel Benefits	1,981	2,176	+195	+9.84
	Subtotal Personal Services	9,366	9,999	+633	+6.76
21.0	Travel	185	185	0	0
22.0	Transportation of Things	10	10	0	0
23.1	Space Rental Payments (GSA)	1,482	1,486	+4	+.27
23.3	Communications, Utilities and Misc.	343	272	-71	-20.7
24.0	Printing and Reproduction	17	17	0	0
25.0	Other Services	971	1,030	+59	+6.08
26.0	Supplies and Materials	43	43	0	0
31.0	Equipment	222	369	+147	+66.22
	Grand Total	12,639	13,411	+772	+6.11

Budget Object Classification Detail

11.0 Personnel Compensation

Change FY 2016 Enacted – FY 2017 Request

FY 2016 Enacted	FY 2017 Request	Amount	Percent
7,385,000	7,823,000	+438,000	+5.93

The Review Commission requests \$7,823,000 to fund direct payroll costs in FY 2017. This includes funding for a 1.6 percent pay increase that is anticipated in January 2017. This amount assumes the support for 66 FTE positions. This object class also supports awards to recognize those employees whose performance is superior, and who perform special acts or services.

12.0 Personnel Benefits

Change FY 2016 Enacted – FY 2017 Request

FY 2016 Enacted	FY 2017 Request	Amount	Percent
1,981,000	2,176,000	+195,000	+9.84

The Review Commission requests \$2,176,000 to fund the payroll-related costs of employee benefits in FY 2017. These benefits principally consist of the government's contributions to the CSRS and FERS retirement programs, life and health insurance programs, the Transit Subsidy Program, and the Thrift Savings Plan.

21.0 Travel

Change FY 2016 Enacted – FY 2017 Request

FY 2016 Enacted	FY 2017 Request	Amount	Percent
185,000	185,000	0	0

The requested amount for travel in FY 2017 is \$185,000. Travel of Administrative Law Judges (ALJs) to conduct hearings accounts for the majority of this request. It should be noted that approximately 90 percent of the Review Commission's travel budget pays for ALJ travel in order to conduct hearings. By law, these hearings must be conducted as close as possible to the site of the alleged violation. The remainder of these funds is for travel associated with training, necessary travel to the regional offices and other requirements.

22.0 Transportation of Things

Change FY 2016 Enacted – FY 2017 Request

FY 2016 Enacted	FY 2017 Request	Amount	Percent
10,000	10,000	0	0

An amount of \$10,000 is requested to fund the cost of shipping materials between Review Commission offices and other locations.

23.1 Rental Payments to GSA

Change FY 2016 Enacted – FY 2017 Request

FY 2016 Enacted	FY 2017 Request	Amount	Percent
1,482,000	1,486,000	+4,000	+0.27

The request includes \$1,486,000 for office space rental for the National and Regional Offices. These projected rent costs are based on FY 2017 estimates provided by the General Services Administration (GSA) to the Review Commission.

23.3 Communications, Utilities and Miscellaneous Charges

Change FY 2016 Enacted – FY 2017 Request

FY 2016 Enacted	FY 2017 Request	Amount	Percent
343,000	272,000	-71,000	-20.70

The Review Commission requests \$272,000 for communication costs in FY 2017. The Review Commission began the development and implementation of an e-filing system in FY 2013 with a hosted internet-based interface that accommodates the electronic filing of litigation documents. This includes telecommunication costs to support our cloud initiative with increased security and bandwidth requirements and pave the way for future cloud initiatives.

Local phone service and telecommunication costs are projected to be \$252,000. Postage for the required mailing of letters, case files, and other materials related to cases is expected to be \$20,000.

24.0 Printing and Reproduction

Change FY 2016 Enacted – FY 2017 Request

FY 2016 Enacted	FY 2017 Request	Amount	Percent
17,000	17,000	-0-	-0-

The requested amount for printing in FY 2017 is \$17,000. Printing costs consist mainly of the charges for publishing rules, proposed rules and other announcements in the Code of Federal Regulations (CFR) and/or the Federal Register, and for purchasing copies of the CFR and other GPO publications. Together, these printing/publishing costs are expected to approximate \$10,000 in fiscal year 2017. The balance of the budget -- \$7,000 -- is needed for printing of Rules of Procedure and Guide to the Review Commission pamphlets, which are provided to parties to Review Commission proceedings.

25.0 Other Services

Change FY 2016 Enacted – FY 2017 Request

FY 2016 Enacted	FY 2017 Request	Amount	Percent
971,000	1,030,000	+59,000	+6.08

The requested amount for other services in FY 2017 is \$1,030,000. This amount will allow the Review Commission to maintain our current services. Requirements in this area fall into two basic categories: Interagency Agreements for services provided by other Federal agencies; and contractual services provided by non-Federal vendors. Additional information on each of these is provided in the following paragraphs.

Services Provided by Other Federal Agencies. A total of \$458,107 is requested for services provided by other Federal agencies. Our costs have increased in this category as a result of additional service costs associated with a new time and attendance system provided by the National Finance Center (NFC), along with higher costs for our Interagency Agreements with the Office of Personnel Management (OPM) and NARA. This area includes \$14,000 for personnel and payroll services provided by NFC, \$295,000 for financial and administrative services provided by the Bureau of the Fiscal Service (BFS), \$35,000 for the annual ALJ Assessment Fees and certification services provided by OPM, and \$56,000 for building security (estimated) provided by the Department of Homeland Security. This category also includes funds needed for continuing maintenance of the Review Commission’s Internet website, \$30,000, which is housed at and maintained by the Government Printing Office. The remaining amount will be used to fund other Interagency Agreements such as with the U.S. Department of Health and Human Services (Federal Occupational Health), the General Services Administration, OPM and NARA.

Other Contractual Services. OSHRC procures a variety of services to support us in carrying out our mission. These include: court reporting (\$100,000); maintenance/incremental enhancements including security of the Review Commission’s information technology system, and services to support deployment of the e-filing system (\$183,000); services for translation of documents and interpreters for individuals with limited English proficiency (\$20,000); independent evaluation of information technology security under the Federal Information Security Management Act (FISMA) (\$29,000); and on-line legal research (\$43,000). This category also includes funding for other contractual services such as the annual audit of our financial statements (\$29,000), library operations (\$81,000), training and other requirements to support the agency’s mission.

26.0 Supplies and Materials

Change FY 2016 Enacted – FY 2017 Request

FY 2016 Enacted	FY 2017 Request	Amount	Percent
43,000	43,000	0	0

The requested amount for supplies and materials in FY 2017 is \$43,000. This amount includes general office supplies (\$22,000) and information technology supplies and software (\$21,000).

31.0 Equipment

Change FY 2016 Enacted – FY 2017 Request

FY 2016 Enacted	FY 2017 Request	Amount	Percent
222,000	369,000	+147,000	+66.22

The requested amount for equipment in FY 2017 is \$369,000. The Review Commission began the development and implementation of an e-filing system in FY 2013 with a hosted internet-based interface that accommodates the electronic filing of litigation documents. As a result, our information technology infrastructure was upgraded and licensing, and hosting costs are required to maintain the system. We estimate that the licensing costs will be \$247,000. Subscriptions and other publications necessary to maintain our legal libraries are included in this object class. The remainder is required for new and/or replacement computer and other information technology requirements, and to enable us to comply with Government-wide mandates such as the FISMA. Our information technology equipment includes personal computers, printers, a local area network, and associated peripherals. Finally, a small portion of this funding will be used to purchase any office furniture that may be needed.

V. OTHER TABLES

The U.S. Occupational Safety and Health Review Commission Appropriation History

<u>Fiscal Year</u>	<u>Request to Congress</u>	<u>House Allowance</u>	<u>Senate Allowance</u>	<u>Appropriation</u>
1995	\$7,655,000	\$7,595,000	\$7,595,000	\$7,595,000
1996	\$8,127,000	\$8,200,000	\$8,100,000	\$8,081,000 ²
1997	\$7,753,000	\$7,753,000	\$7,753,000	\$7,738,000 ³
1998	\$7,800,000	\$7,900,000	\$7,800,000	\$7,900,000
1999	\$8,050,000	\$8,100,000	\$8,100,000	\$8,092,000 ⁴
2000	\$8,500,000	\$8,100,000	\$8,500,000	\$8,470,000 ⁵
2001	\$8,720,000	\$8,600,000	\$8,720,000	\$8,720,000
2002	\$8,964,000	\$8,964,000	\$8,964,000	\$8,958,000 ⁶
2003	\$9,577,000	\$9,577,000	\$9,577,000	\$9,673,000 ⁷
2004	\$10,115,000	\$10,115,000	\$9,610,000	\$9,863,000 ⁸
2005	\$10,516,000	\$10,595,000	\$10,595,000	\$10,510,240 ⁹
2006	\$10,510,000	\$10,510,000	\$10,510,000	\$10,404,900 ¹⁰
2007	\$10,346,000	\$10,510,000	\$10,346,000	\$10,470,779
2008	\$10,696,000	\$10,696,000	\$10,696,000	\$10,696,000 ¹¹
2009	\$11,186,000	\$11,186,000	\$11,186,000	\$11,186,000
2010	\$11,712,000	\$11,712,000	\$11,712,000	\$11,712,000
2011	\$12,051,000	\$11,712,000	\$12,051,000	\$11,712,000 ¹²
2012	\$12,773,000	\$11,689,000	\$11,689,000	\$11,689,000 ¹³
2013	\$11,965,000	\$11,667,000	\$11,667,000	\$11,666,908 ¹⁴
2014	\$12,634,830			\$11,411,000
2015	\$12,651,000	\$12,651,000	\$12,651,000	\$11,639,000
2016	\$13,212,000	\$12,639,000	\$11,100,000	\$12,639,000

² Reduced to \$8,081,000 by P.L. 104-134

³ Reduced to \$7,738,000 by P.L. 104-208

⁴ Reduced to \$8,092,000 by H.R. 1664

⁵ Reduced to \$8,470,000 by P.L. 106-113

⁶ Reduced to \$8,958,000 by P.L. 107-206

⁷ Reduced to \$9,610,125 by P.L. 108-7

⁸ Reduced to \$9,863,000 by P.L. 108-199

⁹ Reduced to \$10,510,240 by P.L. 108-447

¹⁰ Reduced to \$10,404,900 by P.L. 109-149

¹¹ Reduced to \$10,509,141 by P.L. 110-161

¹² Reduced to \$11,688,576 by P.L. 112-10

¹³ Reduced to \$11,666,908 by P.L. 112-74

¹⁴ Reduced to \$11,056,659 by P.L. 113-6 and Sequestration Order issued March 1, 2013

**Authorized Full Time Positions
By Function**

	<u>FY 2015</u> Actual	<u>FY 2016</u> Estimate	<u>FY 2017</u> Estimate
Administrative Law Judge:			
AL-II	1	1	1
AL-III	11	11	11
GS-14	2	3	2
GS-13	1	3	4
GS-12	2	1	1
GS-11	0	1	1
GS-10	1	1	1
GS-9	2	1	2
GS-8	<u>4</u>	<u>6</u>	<u>5</u>
<i>Sub-total</i>	24	28	28
Commission:			
Executive Level III	0	1	1
Executive Level IV	2	2	2
ES-00	2	2	2
GS-15	4	7	7
GS-14	5	7	7
GS-13	2	2	2
GS-12	2	1	1
GS-11	3	4	4
GS-10	0	0	0
GS-9	1	1	1
GS-8	1	1	1
GS-7	<u>0</u>	<u>1</u>	<u>1</u>
<i>Sub-total</i>	22	29	29
Office of the Executive Director:			
ES-00	1	1	1
GS-15	2	2	2
GS-14	0	0	0
GS-13	0	0	0
GS-12	3	4	5
GS-11	0	1	0
GS-9	1	0	0
GS-7	0	0	0
GS-6	0	1	1
GS-5	<u>0</u>	<u>0</u>	<u>0</u>
<i>Sub-total</i>	7	9	9
Total full-time positions:	53	66	66