

Occupational Safety and Health Review Commission

OSHRC

Fiscal Year 2012

Performance Budget and Justification



February 2011

Table of Contents

Fiscal Year 2012 Performance Budget and Justification

	Page
I. Introduction -- Mission, Vision, and Strategic Goal.....	1
II. Performance Budget Justification by Organizational Function.....	3
III. Budget by Object Classification Category.....	23
IV. Other Tables.....	28

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

Occupational Safety and Health Review Commission

Our Mission

The 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 all parties are treated consistent with due process when disputes arise with OSHA.

Our Functions and Procedures

Our Rules of Procedure (which mirror the Federal Rules of Civil Procedure) provide two levels of adjudication when an employer contests an OSHA citation for alleged violations of the Act or failure to abate such alleged violations. The first is a trial level, which affords an opportunity for a hearing before a Review Commission Administrative Law Judge. The Judge's decision becomes final unless the decision is directed for review to the Commission. The second level is a discretionary appellate review of the Judge's decision by Commission members who are appointed by the President. Both before its judges and the Commissioners, the Review Commission provides 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, D.C. OSHRC also has two regional offices: one in Atlanta, GA, and one in Denver, CO. The regional offices are staffed with Administrative Law Judges who travel, as necessary, to adjudicate cases in locales 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 define and explain 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 strives to improve its performance, service, and value to the American people.

Strategic Goals

OSHRC has three overarching strategic goals: 1) 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) Responsible stewardship of the fiscal and human resources employed by the Review Commission in accordance with the agency's statutory mandate and other applicable law.

II. PERFORMANCE BUDGET JUSTIFICATION

Budget Request Summary

To continue our mission of adjudicating OSHA-issued workplace safety citations, the Occupational Safety and Health Review Commission requests an appropriation of \$12,773,000 to fund essential agency programs and support 71 full-time equivalent (FTE) positions in FY 2012.

The funding requested would allow us to fulfill our legislative mandate to serve as an administrative court providing fair and prompt 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 request also supports the goal in the strategic plan to improve service to the public.

Our FY 2012 budget request includes:

- \$10,108,968 to support direct payroll and related costs for 71 FTEs. These costs represent 79 percent of the Review Commission's appropriation. This level of FTE will be used to handle an expected increased case load, especially at the ALJ level.
- \$1,308,000 for office space rent.
- \$465,842 for services provided by other Federal agencies, such as support for financial and administrative services provided by the Bureau of the Public Debt (BPD) and personnel and payroll services provided by the National Finance Center (NFC).
- Funds 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.

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 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 Administrative Law Judges and Commissioners stems principally from the nature of their functions, which must be apart 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:

<u>Funding (in millions) and FTE by Function</u>				
	<u>FY 2010 Authorized</u>		<u>FY 2012 Estimate</u>	
	<u>\$</u>	<u>FTE</u>	<u>\$</u>	<u>FTE</u>
Administrative Law Judge	4.7	24	5.0	27
Commission	5.2	31	5.0	27
Executive Director	<u>1.8</u>	<u>12</u>	<u>2.8</u>	<u>17</u>
Total	11.7	67 *	12.8	71

During FY 2010 the Review Commission organizationally transferred its Office of Executive Secretary from the Commission-level function to the Office of the Executive Director. This transfer did not affect or increase overall Review Commission staffing. This transfer is reflected in the FY 2012 estimate.

* Note: Total FTE encumbered during FY 2010 was 60.

Administrative Law Judge Function

The front line of our agency's delivery of services to the American public rests with the Administrative Law Judges. 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 Commission and its ALJs.

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

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 Judge for assignment to an Administrative Law Judge. The case is generally assigned to an Administrative Law Judge 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, including settlement, 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 constant monitoring of its Simplified Proceedings and Mandatory Settlement programs. The Administrative Law Judge function addresses a caseload that is becoming larger and more complex, as reflected by the increasing number and complexity of OSHA citations.

OSHA completed 40,942 inspections in FY 2010 and estimates that it will complete 42,250 inspections in FY 2011 and, 42,500 inspections in FY 2012. Even more important from the Review Commission's resource perspective has been a marked increase in the number of citations being contested, and the resulting number of contests being docketed. For example, during FY 2009, the Review Commission docketed 2,058 contests. We received 2,565 new contests during FY 2010. This represents an increase of approximately 25% in one fiscal year. Moreover, OSHA has announced a new administrative penalty policy which went into effect at the beginning of FY 2011. This new penalty policy is expected to increase the average penalty

for a serious violation from approximately \$1,000 to \$3,000 - \$4,000. Accordingly, both OSHA and the Review Commission are expecting a greater percentage of citations to be contested during FY 2011 and FY 2012.

Based on preliminary estimates provided by OSHA, it is possible that the Review Commission could see a range of 3000 – 4000 contests docketed during FY 2011 as a consequence of employers challenging the proposed higher assessed penalties. Such a contest rate would be far in excess of anything the Review Commission has experienced in many years. For FY 2012, OSHA’s preliminary estimate of contests is approximately 4000. Over time, it is possible that contest rates will decline back to current levels. Nevertheless, the Review Commission is expecting a sizeable increase in contests during FY 2011 and 2012.

Moreover, in addition to an expected large increase in contests as a result of the new OSHA 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 lock-out/tag-out, confined spaces, health care hazards, asbestos, lead poisoning, process safety, and construction industry hazards, etc.). These cases command a greater portion of the judges’ time.

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 asbestos, lead poisoning, 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 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 and 2012, the Review Commission intends to study its current Mandatory Settlement Part system to ascertain whether even greater improvement in this settlement process can be achieved. With the expected large increase in contests to be docketed, this approach could be important in avoiding a backlog of cases at the ALJ level.

Under Commission Rule 2200.120, where the parties consent thereto, the Chief Administrative Law Judge may assign a Settlement Judge to a pending proceeding to aid the parties in disposing

of cases. 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 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 proposed penalties are not more than \$20,000, and 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 the formal Rules of Procedure and evidence, while ensuring that due process requirements will be maintained. Under this process, a business, with or without counsel, can present its case before a Review Commission judge 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 2010, approximately 50 percent of new cases were assigned to Simplified Proceedings. The Review Commission projects that we will continue to assign 50 percent of new cases to the Simplified Proceedings process in FY 2011 and FY 2012.

Simplified Proceedings Case Activity

FY 2006 through FY 2011

	<u>FY 2007</u> <u>Actual</u>	<u>FY 2008</u> <u>Actual</u>	<u>FY 2009</u> <u>Actual</u>	<u>FY 2010</u> <u>Actual</u>	<u>FY 2011</u> <u>Estimate</u>	<u>FY 2012</u> <u>Estimate</u>
New Cases	1,998	1,962	2,058	2,565	3,250	3,250
Cases assigned to Simplified Proceedings	1,104	990	1,041	1,327	1,625	1,625

Anticipated Administrative Law Judge (ALJ) Workload for FY 2012

Four major factors have an impact on the ALJs' workload: (1) the quantity, magnitude, and nature of the cases; (2) the success 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 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 2007, 2008, 2009, and 2010, and estimated workloads for fiscal years 2011 and 2012.

	FY 2007 <u>Actual</u>	FY 2008 <u>Actual</u>	FY 2009 <u>Actual</u>	FY2010 <u>Actual</u>	FY 2011 <u>Estimate</u>	FY 2012 <u>Estimate</u>
OSHA Inspections*:	39,324	38,591	40,549	40,942	42,250	42,500
Administrative Law Judge Workload:						
a. Case Inventory, Start of Year	685	625	739	777	983	1,333
b. New Cases	1,998	1,962	2,058	2,565	3,250	3,250
c. Total Caseload	2,683	2,587	2,797	3,342	4,233	4,583
d. Disposals						
(1) With Hearing	60	69	67	107	110	130
(2) Without Hearing	1,998	1,779	1,953	2,252	2,790	2,920
e. Total Dispositions	2,058	1,848	2,020	2,359	2,900	3,050
Total Case Inventory, End of Year	625	739	777	983	1,333	1,533

*Provided by Directorate of Evaluation and Analysis, OSHA.

Staffing

The Office of the Chief Administrative Law Judge requires 27 FTE in FY 2012. This staff level is an increase over FY 2010 and FY 2011, and includes 12 Administrative Law Judges, and an increase in both staff attorneys and support staff. This staffing level is needed to support the projected increased 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. Due to an expected sizeable increase in the OSHA citation contest rate, the Review Commission's budget includes staffing for two additional attorneys to support the ALJs. These attorneys will primarily be engaged in drafting decisions for the ALJs in cases that go to hearing. The additional support staff person will primarily handle legal assistant work, including sending appropriate notifications to parties, scheduling, etc. in matters that are before the Review Commission's ALJs.

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 2010</u>		<u>Authorized</u>		<u>FY 2012 Estimate</u>	
	<u>\$</u>	<u>FTE</u>		<u>\$</u>	<u>FTE</u>	
Administrative Law Judge	4.7	24		5.0	27	

Strategic Plan and Outcome Goals

The Review Commission’s Strategic Plan for 2010 – 2015 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 in less than one year.

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

- Expeditious assignment of cases to judges;
- Use of objective criteria to determine complex cases, and track the processing of these cases;
- Monitoring case performance, and improving case management information systems and reports;
- Providing 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 develop services and processes equal to the very best in judicial practice;
- Implementing appropriate changes in the agency’s Rules of Procedure to improve case processing (e.g., Mandatory Settlement Part and Simplified Proceedings), and seeking new ADR methods; and
- Continuing to use a team of judges to handle, on a rotational basis, extremely complex cases and assigning appropriate staff to timely process and monitor such cases, including settlement discussions.

To best serve the American people the Review Commission revised its strategic plan for the period FY 2010 through FY 2015. OSHRC’s Strategic Plan includes the following goals for the Office of the Chief Administrative Law Judges for fiscal years 2010 through 2015.

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2007 Actual (Target)	FY 2008 Actual (Target)	FY 2009 Actual (Target)	FY 2010 Actual (Target)	FY2011 (Target)	FY 2012 (Target)
<ul style="list-style-type: none"> Ensure that a significant proportion of non-complex cases at the ALJ level are resolved in less than one year. 	Percent within one year.	99% Target Exceeded (97%)	99% Target Met (99%)	98% Target Met (98%)	98% Target Met (98%)	98%	98%
<ul style="list-style-type: none"> Ensure that a significant proportion of complex cases at the ALJ level are resolved in less than one year. 	Percent within one year.*	97% Target not met (98%)	99% Target met (99%)	98% Target Exceeded (95%)	89% Target not met (95%)	95%	95%

Note: For FY 2007 – 2009, the target case resolution period for complex cases at the ALJ level was 18 months (540 days). In accordance with the Review Commission’s revised Strategic Plan (FY 2010- 2015), the target period has been reduced to one year commencing in FY 2010.

Although Review Commission ALJs met their target goal for resolution of non-complex cases within one year, the resolution of complex cases was more problematic. There were several reasons for this. First, the ALJs FY 2010 workload substantially increased over prior FYs and included a 60% increase in the number of cases disposed of with hearings. Hearings are necessarily time consuming, and this had an effect on case disposal. In addition, some of the complex cases resolved by the ALJs were extraordinarily complicated and included some of the largest proposed OSHA penalties in history. Examples of such matters included the Imperial Sugar and BP cases, both of which were ultimately resolved by Review Commission ALJs utilizing Settlement Part procedures.

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 Administrative Law Judge. 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 decisions by the Review Commission's Administrative Law Judges.

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 Administrative Law Judges become final 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 General Counsel after the Commission decides a case.

The Office of the General Counsel (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, FOIA, EEO, procurement, appropriations, Privacy Act and other areas.

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 Commission consists of three Members appointed by the President. The Act requires a quorum of two Commissioners to take official action. Further, by statute, 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.

During the first four and a half months of FY 2010, the Commission operated with only two Commissioners. For the remainder of the fiscal year, a full Commission (3 Commissioners) has been in place. The Commission resolved 15 cases during fiscal year 2010.

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 both at the Administrative Law Judge and at the Commission levels has increased significantly in recent years.

Anticipated Commission Workload for FY 2012

The Review 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 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 2010, the Commission had 22 cases pending at the beginning of the year. It received 24 new cases and resolved 15 cases by year-end. Thus, the Commission entered FY 2011 with 31 cases pending review. For FY 2011, the Commission anticipates receiving 29 new cases and disposing of 24 cases, ending that year with an inventory of 36 cases. Actual dispositions, of course, may be affected if a full Commission is not in place.

Commission Case Activity

	<u>FY 2007</u> <u>Actual</u>	<u>FY 2008</u> <u>Actual</u>	<u>FY 2009</u> <u>Actual</u>	<u>FY2010</u> <u>Actual</u>	<u>FY 2011</u> <u>Estimate</u>	<u>FY 2012</u> <u>Estimate</u>
New Cases:						
Cases Directed for Review:	21	11	16	24	23	28
Other New Cases:						
Interlocutory						
Appeals	0	0	0	0	5	3
Remands	4	2	6	0	1	1
Other	0	0	0	0	0	0
Total Other New Cases:	4	2	6	0	6	4
Total New Cases:	25	13	22	24	29	32
Case Inventory from Prior Year:	27	25	20	22	31	36
Total Caseload:	52	38	42	46	60	68
Dispositions:	27	18	20	15	24	31
Case Inventory, End of Year:	25	20	22	31	36	37

Staffing

Our FY 2012 budget requests 27 FTE for the Commission function, including 10 FTEs for the three Commissioners and their immediate staff and 17 FTEs for the Office of General Counsel.

Funding (in millions) and FTE

	<u>FY 2010</u>		<u>Authorized</u>		<u>FY 2012 Estimate</u>	
	<u>\$</u>	<u>FTE</u>	<u>\$</u>	<u>FTE</u>	<u>\$</u>	<u>FTE</u>
Commission	5.2	31	5.0	27		

Strategic Plan and Outcome Goals

The Review Commission’s Strategic Plan 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"> • Resolve the oldest cases on the Review Commission’s docket. • Reduce the average age of open cases at the Commission-level. • Resolve all priority cases in a timely manner.

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

- Disposing of our inventory of older cases – those docketed at the Commission level prior to 2008. In fiscal year 2010, the Commission decided two of these ten older cases, with the rest anticipated to be decided during fiscal year 2011. Another priority is to reduce the average age of Commission-level cases to two years or less;
- Expediting the disposition of priority cases that require immediate action (in general, court remands, interlocutory reviews, Federal Rule 60(b) cases, and Commission Rule 101(a) defaults);
- Implementing internal markers to assist in the preparation of cases and issuance of Commission decisions;
- Accelerating the processing of cases through a variety of efforts, including early intervention of the Commissioners’ counsels, computerization of changes to draft decisions and development of strategies to resolve cases when there are only two Commission members;
- Expanding the use of teams in the Office of the General Counsel to reduce the time needed to write decisional memoranda and draft decisions;
- Developing new methods to shorten case preparation time;
- Developing procedures for case processing and decision quality;
- Implementing changes to the Agency’s Rules of Procedure to improve case processing;
- Making greater use of oral arguments and requests for amicus briefs for complex cases and cases that present significant questions of law; and
- Developing case processing measures for employees assigned to cases to

ensure individual performance plans support priorities in the Review Commission's strategic and annual performance plans.

The following new performance goals have been developed for fiscal year 2010 and 2011 to support the FY 2010 – 2015 Strategic Plan:

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2010 Actual (Target)	FY 2011 (Target)	FY 2012 (Target)
Resolve the oldest cases on the Review Commission's docket.	All cases docketed at the Commission level prior to 2008 resolved.	20% Target Not Met (30% of oldest cases)	(70% of oldest cases)	Completed by end of FY 2011
Reduce the average age of open cases at the Commission-level. *	Average age of open cases.	32 months Target Met (41 months or less)	(36 months or less)	(33 months or less)
Resolve all priority cases in a timely manner.	Percent of priority cases disposed of within 6 months.	100% Target Met (100%)	(100%)	(100%)

* 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 revised Strategic Plan (FY 2010- 2015) anticipates reducing this average to 24 months by the end of FY 2015. However, resolving the oldest cases on the Review Commission's docket, e.g., those cases docketed prior to 2008, which is reflected under the first outcome goal in this chart, is the highest priority. It is possible that, in the short term, the average age of open cases may increase. While this is not anticipated to occur, the presence of a full Commission will be an important factor in achieving our goal.

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. The Office also supervises the work of the Commission's Executive Secretary, who is responsible for the docketing of cases at both the ALJ and Commission levels.

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, 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 Executive Director Workload for FY 2012

During FY 2012, 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; and
- 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.

In FY 2012, we plan to enhance our web-based transparency initiatives, including enhancing the OSHRC website to make more information available to internal and external customers, revising our Continuity of Operations (COOP) plan, and undertaking other activities in support of the Review Commission's mission.

Staffing

Our FY 2012 budget requests funding for 17 FTE for the Office of the Executive Director function to perform the duties and responsibilities outlined above. This staffing increase over the initial FY 2011 request is primarily due to the reassignment of the Office of Executive Secretary from the Commission function to the Office of Executive Director function during FY 2010. The associated functional transfer involved four positions previously assigned to the Commission function.

The Office of the Executive Director staff 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 2010 Authorized</u>		<u>FY 2012 Estimate</u>	
	<u>\$</u>	<u>FTE</u>	<u>\$</u>	<u>FTE</u>
Executive Director	1.8	12	2.8	17

Strategic Plan and Outcome Goals

The Office of Administration’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 accurate, current and complete, 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. • Update agency’s FOIA regulations and FOIA reference guide. [Note: This priority goal was achieved during FY 2010.]

<p><i>Responsible stewardship of the fiscal and human resources employed by the Review Commission in accordance with the agency's statutory mandate and other applicable law.</i></p>	<ul style="list-style-type: none"> • Improve the Review Commission's outreach activities with affected public and with other Federal agencies. • Recruit and maintain a diverse and highly motivated staff with the skills to support the mission of the agency. • Invest in human capital by increasing staff development and training opportunities and increasing employees' capabilities and potential. • Ensure that the agency's performance management system enhances individual and organizational effectiveness. • Improve case tracking through implementation of a new IT case management system. • Develop metrics to measure ALJ effort devoted to non-hearing case resolution. • Make use of best knowledge management (KM) practices to ensure that employees are better prepared to perform their work, and to provide for continuity and succession planning. • Improve the quality of employee work life through enhanced use of IT, telework, wellness programs, etc. • Examine opportunities for insourcing of work that has been outsourced to contractors.
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The following new performance goals have been developed for fiscal years 2011 and 2012 to support the FY 2010 – 2015 Strategic Plan:

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2011 (Target)	FY 2012 (Target)
Invest in human capital by increasing staff development and training opportunities and increasing employees' capabilities and potential.	One percent of basic payroll devoted to staff training and development by FY 2015, and no fewer than 24 hours training per staff member per year.	(.45% of basic payroll to training and 10 hours)	(.55% of basic payroll to training and 12 hours)

<u>Outcome Goals</u>	<u>Performance Measures</u>	FY 2011 (Target)	FY 2012 (Target)
Examine and identify contracted positions appropriate for insourcing.	Percentage of positions identified appropriate for insourcing that are insourced	(Positions identified)	(50% of identified positions insourced)
Use of 360 degree employee-supervisor feedback mechanisms.	All supervisors subject to 360 degree feedback, and feedback is used to ensure that individual and organizational effectiveness goals are being met.	(Appropriate feedback instrument developed)	(Feedback mechanism used for all supervisors)

III. BUDGET BY OBJECT CLASSIFICATION CATEGORY

Budget by Object Classification (BOC) Category

The Occupational Safety and Health Review Commission requests an appropriation of \$12,773,000 and 71 FTE for FY 2012. The funding and staffing requested will enable the Review Commission to carry out its mission, as required by the Occupational Safety and Health Act. The growth in the FY 2012 budget request is required to pay salary and to provide for full staffing of all 71 approved FTE, as well as to pay other costs imposed upon us. The proposed budget for FY 2012 by object classification category is shown in the table below, along with the FY 2010 actuals. A narrative explanation of the amount requested for each object classification follows the table.

Object Classification Table

Fiscal Years 2010 and 2012
(Dollars in Thousands)

Budget Object Class		FY 2010	FY 2012	Change FY 2010-2012	
				\$	%
11.0	Personnel Compensation	\$6,849	\$8,108	+1,259	+18.4
12.0	Personnel Benefits	1,621	2,001	+380	+23.4
	Subtotal Personal Services	8,470	10,109	+1,639	+19.3
21.0	Travel	215	188	-27	-12.5
22.0	Transportation of Things	8	7	-1	-12.5
23.1	Space Rental Payments (GSA)	1,265	1,308	+43	+3.4
23.3	Communications, Utilities and Misc.	154	98	-56	-36.3
24.0	Printing and Reproduction	17	17	0	0
25.0	Other Services	1,159	869	-290	-25.0
26.0	Supplies and Materials	68	46	-22	-32.3
31.0	Equipment	326	131	-195	-59.8
	Unobligated Balance	29	--	--	--
	Total	11,712	12,773	+1,061	+9.1
	FTE	60*	71	+ 11	+18.3

*FY 2010 Authorized FTE was 67.

Sum of individual BOC expenditures and changes to BOCs may not add to totals due to rounding.

Object Classification Detail

11.0 Personnel Compensation

		<u>Change FY 2010-FY 2012</u>	
<u>FY 2010</u>	<u>FY 2012</u>	<u>Amount</u>	<u>%</u>
\$6,849,000	\$8,108,000	+\$1,259,000	+18.4

The budget request for FY 2012 includes \$8,108,000 to fund the direct payroll costs of 71 FTE.

This object class also supports awards to recognize those employees whose performance is superior, and who perform special acts or services. Cash awards are a necessary incentive under the Review Commission's performance appraisal system, and form an important component of the continuing effort to improve the quality and timeliness of work products that contribute to overall agency efforts to accomplish its Strategic Plan objectives. The Review Commission has implemented a results-oriented performance management system for both senior executive and GS level employees. As part of this effort, the Review Commission also revamped its system for employee recognition to link awards to the accomplishment of critical elements and performance goals. Under this system, employee performance awards are directly linked to performance appraisals, which are based on individual performance agreements, established in advance, by employees and their supervisors.

12.0 Personnel Benefits

		<u>Change FY 2010-FY 2012</u>	
<u>FY 2010</u>	<u>FY 2012</u>	<u>Amount</u>	<u>%</u>
\$1,621,000	\$2,001,000	+\$380,000	+23.4

This budget includes \$2,001,000 to fund the payroll-related costs of employee benefits in FY 2012. 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

		<u>Change FY 2010-FY 2012</u>	
<u>FY 2010</u>	<u>FY 2012</u>	<u>Amount</u>	<u>%</u>
\$215,000	\$188,000	-27,000	-12.5

The Review Commission requests \$188,000 for travel in FY 2012. 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

		<u>Change FY 2010-FY 2012</u>	
<u>FY 2010</u>	<u>FY 2012</u>	<u>Amount</u>	<u>%</u>
\$8,000	\$7,000	-1,000	-12.5

An amount of \$7,000 is requested to fund the cost of shipping materials between Review Commission offices and other locations, and the shipping costs associated with the purchase of supplies and equipment.

23.1 Rental Payments to GSA

		<u>Change FY 2010-FY 2012</u>	
<u>FY 2010</u>	<u>FY 2012</u>	<u>Amount</u>	<u>%</u>
\$1,265,000	\$1,308,000	+43,000	+3.4

The request includes \$1,308,000 for office space rental for the National and Regional Offices. These projected rent costs are based on FY 2012 estimates provided by the General Services Administration (GSA) to the Review Commission.

23.3 Communications, Utilities and Miscellaneous Charges

		<u>Change FY 2010-FY 2012</u>	
<u>FY 2010</u>	<u>FY 2012</u>	<u>Amount</u>	<u>%</u>
\$154,000	\$98,000	-56,000	-36.3

Telephone and postage costs are projected to require a total of \$98,000 in FY 2012. Local phone service and telecommunications are projected to cost \$70,000; long distance service is estimated at \$8,000. 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

		<u>Change FY 2010-FY 2012</u>	
<u>FY 2010</u>	<u>FY 2012</u>	<u>Amount</u>	<u>%</u>
\$17,000	\$17,000	-0-	-0-

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 2012. 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

		<u>Change FY 2010-FY 2012</u>	
<u>FY 2010</u>	<u>FY 2012</u>	<u>Amount</u>	<u>%</u>
\$1,159,000	\$869,000	-290,000	-25.0

A total of \$869,000 is requested for Other Services in FY 2012. 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 \$465,842 is requested for services provided by other Federal agencies. This area includes \$8,092 for personnel and payroll services provided by the National Finance Center, \$341,331 for financial and administrative services provided by the Bureau of the Public Debt (including funds to BPD to support infrastructure

upgrades), and \$57,800 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 (\$16,225), which is housed at and maintained by the Government Printing Office. The remaining amount will be used to fund other Interagency Agreements such as FOH, GSA (HVAC), and OPM.

Other Contractual Services. OSHRC procures a variety of services to support us in carrying out our mission. These include: court reporting (\$93,290); maintenance of the Review Commission's information technology system (\$52,730); evaluation and support for information technology security (\$29,000); and on-line legal research (\$35,500). This category also includes funding for other contractual services such as the annual audit of our financial statements (\$36,500), library operations (\$50,700), training (\$45,375), and other requirements to support the agency's mission.

26.0 Supplies and Materials

		<u>Change FY 2010-FY 2012</u>	
<u>FY 2010</u>	<u>FY 2012</u>	<u>Amount</u>	<u>%</u>
\$68,000	\$46,000	-22,000	-32.3

The amount of \$46,000 is requested for supplies and materials in FY 2012, including general office supplies (\$24,000) and information technology supplies and software (\$22,000).

31.0 Equipment

		<u>Change FY 2010-FY 2012</u>	
<u>FY 2010</u>	<u>FY 2012</u>	<u>Amount</u>	<u>%</u>
\$326,000	\$131,000	-195,000	-59.8

The amount of \$131,000 is required for equipment in FY 2012. Subscriptions and other publications necessary to maintain our legal libraries make up the bulk of the costs 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 Federal Information Security Management Act. 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.

IV. OTHER TABLES

**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 ¹
1997	\$7,753,000	\$7,753,000	\$7,753,000	\$7,738,000 ²
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 ³
2000	\$8,500,000	\$8,100,000	\$8,500,000	\$8,470,000 ⁴
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 ⁵
2003	\$9,577,000	\$9,577,000	\$9,577,000	\$9,673,000 ⁶
2004	\$10,115,000	\$10,115,000	\$9,610,000	\$9,863,000 ⁷
2005	\$10,516,000	\$10,595,000	\$10,595,000	\$10,510,240 ⁸
2006	\$10,510,000	\$10,510,000	\$10,510,000	\$10,404,900 ⁹
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 ¹⁰
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			

¹ Reduced to \$8,081,000 by P.L. 104-134

² Reduced to \$7,738,000 by P.L. 104-208

³ Reduced to \$8,092,000 by H.R. 1664

⁴ Reduced to \$8,470,000 by P.L. 106-113

⁵ Reduced to \$8,958,000 by P.L. 107-206

⁶ Reduced to \$9,610,125 by P.L. 108-7

⁷ Reduced to \$9,863,000 by P.L. 108-199

⁸ Reduced to \$10,510,240 by P.L. 108-447

⁹ Reduced to \$10,404,900 by P.L. 109-149

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

**Authorized Full Time Positions
by Function**

	<u>FY 2010</u>	<u>FY2011</u>	<u>FY2012</u>
Administrative Law Judge:			
AL-I	1	0	0
AL-II	0	1	1
AL-III	11	11	11
GS-14	3	3	3
GS-13	0	0	2
GS-12	1	1	1
GS-11	2	2	2
GS-9	1	1	2
GS-8	<u>5</u>	<u>5</u>	<u>5</u>
Sub-total	24	24	27
Commission:			
Executive Level III	1	1	1
Executive Level IV	2	2	2
ES-00	2	2	2
GS-15	7	6	6
GS-14	6	10	11
GS-13	6	2	1
GS-12	1	0	0
GS-11	2	3	3
GS-10	1	0	0
GS-9	2	1	1
GS-7	<u>1</u>	<u>0</u>	<u>0</u>
Sub-total	31	27	27
Administration:			
ES-00	1	1	1
GS-15	1	2	2
GS-14	3	4	4
GS-11	4	4	6
GS-10	0	1	1
GS-9	1	1	1
GS-8	0	1	0
GS-7	1	0	0
GS-6	0	1	1
GS-5	<u>1</u>	<u>1</u>	<u>1</u>
Sub-total	12	16	17
Total full-time positions:	67	67	71