

**Occupational Safety and Health Review Commission**

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**OSHRC**

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**Fiscal Year 2013**

**Performance Budget and Justification**



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February 2012

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# **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 \$11,965,000 to fund essential agency programs and support 65 full-time equivalent (FTE) positions in FY 2013.

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 2013 budget request includes:

- \$9,267,000 to support direct payroll and related costs for 65 FTEs. These costs represent 77 percent of the Review Commission's appropriation.
- \$1,415,000 for office space rent.
- \$430,600 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:

<b><u>Funding (in millions) and FTE by Function</u></b>				
	<b>FY 2012 Estimated Actuals*</b>		<b>FY 2013 Estimate</b>	
	<b>\$</b>	<b><u>FTE</u></b>	<b>\$</b>	<b><u>FTE</u></b>
Administrative Law Judge	4.4	24	4.6	25
Commission	5.5	30	5.5	30
Executive Director	<u>1.7</u>	<u>9</u>	<u>1.8</u>	<u>10</u>
Total	11.6	63	11.9	65

\*Actual FTE is estimated to be 63 in FY 2012.



## **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 40,648 inspections in FY 2011, and estimates that it will complete 42,250 inspections in FY 2012 and 43,100 inspections in FY 2013. Of particular importance 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. We received 2,058 new contests during FY 2009, 2,565 during FY 2010 and 3,175 during FY 2011. This represents an increase of about 50 percent. 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 and could lead to a further increase in our caseload.

Moreover, in addition to an expected 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 2012, the Review Commission intends to continue to study its current Mandatory Settlement Part system to ascertain whether even greater improvement in this settlement process can be achieved. With the increase in docketed contests, 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 2011, over 50 percent of new cases were assigned to Simplified Proceedings. The Review Commission projects that in FY 2012 and FY 2013 50 percent of new cases will be assigned to the Simplified Proceedings process.

**Simplified Proceedings Case Activity**

**FY 2008 through FY 2013**

	<b>FY 2008</b> <b><u>Actual</u></b>	<b>FY 2009</b> <b><u>Actual</u></b>	<b>FY 2010</b> <b><u>Actual</u></b>	<b>FY 2011</b> <b><u>Actual</u></b>	<b>FY 2012</b> <b><u>Estimate</u></b>	<b>FY 2013</b> <b><u>Estimate</u></b>
New Cases	1,962	2,058	2,565	3,175	3,250	3,350
Cases assigned to Simplified Proceedings	990	1,041	1,327	1,783	1,625	1,675

**Anticipated Administrative Law Judge (ALJ) Workload for FY 2013**

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 2008, 2009, 2010, and 2011, and estimated workloads for fiscal years 2012 and 2013.

	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY2011</b>	<b>FY 2012</b>	<b>FY 2013</b>
	<b><u>Actual</u></b>	<b><u>Actual</u></b>	<b><u>Actual</u></b>	<b><u>Actual</u></b>	<b><u>Estimate</u></b>	<b><u>Estimate</u></b>
<b>OSHA Inspections*:</b>	38,591	40,549	40,942	40,648	42,250	43,100
<b>Administrative Law Judge Workload:</b>						
a. Case Inventory, Start of Year	625	739	777	983	1,345	1,545
b. New Cases	1,962	2,058	2,565	3,175	3,250	3,350
c. Total Caseload	2,587	2,797	3,342	4,158	4,595	4,895
d. Disposals						
(1) With Hearing	69	67	107	111	130	150
(2) Without Hearing	1,779	1,953	2,252	2,702	2,920	3,050
e. Total Dispositions	1,848	2,020	2,359	2,813	3,050	3,200
Total Case Inventory, End of Year	739	777	983	1,345	1,545	1,695

\*Provided by Directorate of Evaluation and Analysis, OSHA.

## Staffing

The Office of the Chief Administrative Law Judge requires 25 FTE in FY 2013. This staff level includes 12 Administrative Law Judges, along with staff attorneys and support staff. This staffing level will be needed to support the projected workload, based on OSHA's planned inspections in the coming years, and 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.

<b><u>Funding (in millions) and FTE</u></b>				
	<b><u>FY 2012 Estimated Actuals</u></b>		<b><u>FY 2013 Estimate*</u></b>	
	<b><u>\$</u></b>	<b><u>FTE</u></b>	<b><u>\$</u></b>	<b><u>FTE</u></b>
Administrative Law Judge	4.4	24	4.6	25

\*We expect to fill all judicial vacancies in FY 2012. Therefore, we anticipate a full complement of judges in FY 2013.

**Strategic Plan and Outcome Goals**

The Review Commission’s Strategic Plan for 2010 – 2015 includes the following goals and outcomes related to this function:

<b><u>Public Service Goal</u></b>	<b><u>Outcome Goals</u></b>
<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"> <li>• 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.</li> </ul>

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.

<b><u>Outcome Goals</u></b>	<b><u>Performance Measures</u></b>	<b>FY 2008 Actual (Target)</b>	<b>FY 2009 Actual (Target)</b>	<b>FY 2010 Actual (Target)</b>	<b>FY 2011 Actual (Target)</b>	<b>FY2012 (Target)</b>	<b>FY 2013 (Target)</b>
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 met (99%)	98% Target met (98%)	98% Target met (98%)	98% Target met (98%)	98%	98%
Ensure that a significant proportion of complex cases at the ALJ level are resolved in less than one year.	Percent within one year.*	99% Target met (99%)	98% Target exceeded (95%)	89% Target not met (95%)	84% Target not met (95%)	95%	95%

\*Note: For FY 2008 and 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 have met their target goal for resolution of non-complex cases within one year, the resolution of complex cases has been more problematic. There were several reasons for this. First, the ALJs FY 2010 workload substantially increased over prior FYs, an increase that continued in fiscal year 2011. In addition, this workload 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. Finally, several long-serving ALJs retired midway through fiscal year 2011, leaving temporary vacancies as we recruited to fill the vacancies. We expect to have all the judicial vacancies filled in FY 2012, which should help us improve our performance. We will also detail attorney-writers on a rotating basis from elsewhere in the agency to assist the judges with drafting their decisions, and will consider other actions if necessary, both to improve our performance in this area and to address our growing case inventory.

## **Commission Function**

OSHRC'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. The Commission function now 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. This Office was moved back into the Commission function from the Office of the Executive Director in mid fiscal year 2011.

### **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 seven months of FY 2011, the Commission operated with a full Commission. For the remainder of the fiscal year, the Commission operated with only two Commissioners due to one Commissioner's term expiring. The Commission resolved 26 cases during fiscal year 2011 and met its high priority goal of resolving all the "legacy" cases on its docket, those cases docketed at the Commission level prior to 2008.

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 2013**

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 2011, the Commission had 31 cases pending at the beginning of the year. It received 30 new cases and resolved 26 cases by year-end. Thus, the Commission entered FY 2012 with 35 cases pending review. For FY 2012, the Commission anticipates receiving 29 new cases and disposing of 30 cases, ending that year with an inventory of 34 cases. And for FY 2013, the Commission anticipates receiving 29 new cases and disposing of 30 cases, ending that year with an inventory of 33 cases.

<b>Commission Case Activity</b>						
	<b><u>FY 2008</u></b>	<b><u>FY 2009</u></b>	<b><u>FY 2010</u></b>	<b><u>FY2011</u></b>	<b><u>FY 2012</u></b>	<b><u>FY 2013</u></b>
	<b><u>Actual</u></b>	<b><u>Actual</u></b>	<b><u>Actual</u></b>	<b><u>Actual</u></b>	<b><u>Estimate</u></b>	<b><u>Estimate</u></b>
New Cases:						
Cases Directed for Review:	11	16	24	24	24	24
Other New Cases:						
Interlocutory Appeals	0	0	0	6	3	3
Remands	2	6	0	0	2	2
Other	0	0	0	0	0	0
Total Other New Cases:	2	6	0	6	5	5
Total New Cases:	13	22	24	30	29	29
Case Inventory from Prior Year:	25	20	22	31	35	34
Total Caseload:	38	42	46	61	64	63
Dispositions:	18	20	15	26	30	30
Case Inventory, End of Year:	20	22	31	35	34	33

### Staffing

Our FY 2013 budget requests 30 FTEs for the Commission function, including 10 FTEs for the three Commissioners and their immediate staff, 15 FTEs for the Office of General Counsel, and 5 FTEs for the Office of the Executive Secretary.

<b><u>Funding (in millions) and FTE</u></b>				
	<b><u>FY 2012 Estimated</u></b>		<b><u>FY 2013 Estimate</u></b>	
	<b><u>Actuals</u></b>			
	<b><u>\$</u></b>	<b><u>FTE</u></b>	<b><u>\$</u></b>	<b><u>FTE</u></b>
Commission	5.5	30	5.5	30

**Strategic Plan and Outcome Goals**

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

<b><u>Public Service Goal</u></b>	<b><u>Outcome Goal</u></b>
<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"> <li>• Resolve the oldest cases on the Review Commission’s docket.</li> <li>• Reduce the average age of open cases at the Commission-level.</li> <li>• Resolve all priority cases in a timely manner.</li> </ul>

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

- The Commission has successfully disposed 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 or “legacy” cases, and decided the remaining eight cases in fiscal year 2011. A continuing priority is to maintain the average age of Commission-level cases at 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:

<b><u>Outcome Goals</u></b>	<b><u>Performance Measures</u></b>	<b>FY 2010 Actual (Target)</b>	<b>FY 2011 Actual (Target)</b>	<b>FY 2012 (Target)</b>	<b>FY 2013 (Target)</b>
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)	80% Target met (70% of oldest cases)	Completed by end of FY 2011	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)	15 months Target met (36 months or less)	(33 months or less)	(30 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% 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.

## **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 Director of Administration 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 Executive Director Workload for FY 2013**

During FY 2013, 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 and 2013, we plan to continue 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 2013 budget requests funding for 10 FTEs for the Office of the Executive Director function to perform the duties and responsibilities outlined above. 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.

	<b><u>Funding (in millions) and FTE</u></b>			
	<b><u>FY 2012 Estimated Actuals</u></b>		<b><u>FY 2013 Estimate*</u></b>	
	<b><u>\$</u></b>	<b><u>FTE</u></b>	<b><u>\$</u></b>	<b><u>FTE</u></b>
Executive Director	1.7	9	1.8	10

\* We anticipate that all vacancies in the Office of the Executive Director will be filled by FY 2013.

## 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:

<b><u>Public Service Goal</u></b>	<b><u>Outcome Goals</u></b>
<p><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></p>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• Produce timely and accurate reports on the Review Commission’s activities, including all reports required by law.</li> <li>• Update agency’s FOIA regulations and FOIA reference guide. [Note: This priority goal was achieved during FY 2010.]</li> </ul>
<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"> <li>• Improve the Review Commission’s outreach activities with affected public and with other Federal agencies.</li> <li>• Recruit and maintain a diverse and highly motivated staff with the skills to support the mission of the agency.</li> <li>• Invest in human capital by increasing staff development and training opportunities and increasing employees’ capabilities and potential.</li> <li>• Ensure that the agency’s performance management system enhances individual and organizational effectiveness.</li> <li>• Improve case tracking through implementation of a new IT case management system.</li> <li>• Develop metrics to measure ALJ effort devoted to non-hearing case resolution.</li> <li>• 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.</li> <li>• Improve the quality of employee work life through enhanced use of IT, telework, wellness programs, etc.</li> <li>• Examine opportunities for insourcing of work that has been outsourced to contractors.</li> </ul>

The following new performance goals have been developed for fiscal years 2011, 2012 and 2013 to support the FY 2010 – 2015 Strategic Plan:

<b><u>Outcome Goals</u></b>	<b><u>Performance Measures</u></b>	<b>FY 2011 Actual (Target)</b>	<b>FY 2012 (Target)</b>	<b>FY 2013 (Target)</b>
Invest in human capital by increasing staff development and training opportunities and increasing	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.	.35% Target partially met* (.45% of basic payroll to training and 10 hours)	(.55% of basic payroll to training and 12 hours)	(.55 of basic payroll to training and 12 hours)
Examine and identify contracted positions appropriate for insourcing.	Percentage of positions identified appropriate for insourcing that are insourced	One position identified Target Met (Positions identified)	(Insource position identified and identify additional positions to insource)	(Insource any additional positions identified)
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.	Feedback Instrument developed Target Met (Appropriate feedback instrument developed)	(Feedback mechanism used to evaluate all supervisors)	(Feedback mechanism used to evaluate all supervisors)

\* \$31,970, or .45 percent of basic payroll, was devoted to training in FY 2011. However, of the total amount obligated \$24,822 was expensed. This is due in part to being under a continuing resolution the first six months of FY 2011, during which spending on training was severely constrained. The hourly goal will be implemented in FY 2012.



# **III. BUDGET BY OBJECT CLASSIFICATION CATEGORY**

## Budget by Object Classification Category

The Occupational Safety and Health Review Commission requests an appropriation of \$11,965,000 for FY 2013. The funding requested will enable the Review Commission to carry out its mission, as required by the Occupational Safety and Health Act and to support 65 FTE. The proposed budget for FY 2013 by object classification category is shown in the table below, along with the FY 2012 estimated actuals. A narrative explanation of the amount requested for each object classification follows the table.

### Object Classification Table

Fiscal Years 2012 and 2013

(Dollars in Thousands)

			<b>Change FY 2012-2013</b>	
<b>Budget Object Class</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>\$</b>	<b>%</b>
11.0 Personnel Compensation	\$7,360	\$7,456	+96	+1.3
12.0 Personnel Benefits	1,690	1,811	+121	+7.1
<b>Subtotal Personal Services</b>	<b>9,050</b>	<b>9,267</b>	<b>+217</b>	<b>+2.4</b>
21.0 Travel	185	185	0	0
22.0 Transportation of Things	7	7	0	0
23.1 Space Rental Payments (GSA)	1,273	1,415	+142	+11.2
23.3 Communications, Utilities and Misc.	95	109	+14	+14.7
24.0 Printing and Reproduction	17	17	0	0
25.0 Other Services	867	800	-67	-7.7
26.0 Supplies and Materials	45	43	-2	-4.4
31.0 Equipment	128	122	-6	-4.7
<b>Total</b>	<b>11,667</b>	<b>11,965</b>	<b>+298</b>	<b>+2.5</b>

## Object Classification Detail

### 11.0 Personnel Compensation

		<u>Change FY 2012-FY 2013</u>	
<u>FY 2012</u>	<u>FY 2013</u>	<u>Amount</u>	<u>%</u>
\$7,360,000	\$7,456,000	+\$96,000	+1.3

The budget request for FY 2013 includes \$7,456,000 to fund the direct payroll costs of 65 FTE. This includes funding for comparability pay increases that are anticipated in January 2013.

This object class also supports awards to recognize those employees whose performance is superior, and who perform special acts or services. For FY 2011, the Review Commission reduced its total spending on individual performance awards for members of the Senior Executive Service (SES) to no more than five percent of aggregate salaries. It also reduced spending for performance awards and individual contribution awards (e.g. special act) for all non-SES employees. For FY 2012, the Review Commission will spend no more than one percent of the aggregate salaries of those employees at the end of the previous fiscal year on individual performance awards. The reductions are made in accordance with the guidance from the Office of Personnel Management. We expect that this reduced level will continue and have reduced our awards amount accordingly for FY 2013.

### 12.0 Personnel Benefits

		<u>Change FY 2012-FY 2013</u>	
<u>FY 2012</u>	<u>FY 2013</u>	<u>Amount</u>	<u>%</u>
\$1,690,000	\$1,811,000	+\$121,000	+7.1

This budget includes \$1,811,000 to fund the payroll-related costs of employee benefits in FY 2013. 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 2012-FY 2013</u>	
<u>FY 2012</u>	<u>FY 2013</u>	<u>Amount</u>	<u>%</u>
\$185,000	\$185,000	-0-	-0-

The Review Commission requests \$185,000 for travel in FY 2013. 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 2012-FY 2013</u>	
<u>FY 2012</u>	<u>FY 2013</u>	<u>Amount</u>	<u>%</u>
\$7,000	\$7,000	-0-	-0-

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 2012-FY 2013</u>	
<u>FY 2012</u>	<u>FY 2013</u>	<u>Amount</u>	<u>%</u>
\$1,273,000	\$1,415,000	+142,000	+11.2

The request includes \$1,415,000 for office space rental for the National and Regional Offices. These projected rent costs are based on FY 2013 estimates provided by the General Services Administration (GSA) to the Review Commission.

### 23.3 Communications, Utilities and Miscellaneous Charges

<u>Change FY 2012-FY 2013</u>			
<u>FY 2012</u>	<u>FY 2013</u>	<u>Amount</u>	<u>%</u>
\$95,000	\$109,000	+14,000	+14.7

Telephone and postage costs are projected to require a total of \$109,000 in FY 2013. This increase is due to the Review Commission's transition to Networx and is based on the FY 2013 estimated costs received from the telecommunications company. Local phone service and telecommunications are projected to cost \$89,000. 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 2012-FY 2013</u>			
<u>FY 2012</u>	<u>FY 2013</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 2013. 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 2012-FY 2013</u>			
<u>FY 2012</u>	<u>FY 2013</u>	<u>Amount</u>	<u>%</u>
\$867,000	\$800,000	-67,000	-7.7

A total of \$800,000 is requested for Other Services in FY 2013. 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 \$430,600 is requested for services provided by other Federal agencies. This area includes \$8,497 for personnel and payroll services provided by the National Finance Center, \$299,402 for financial and administrative services provided by the Bureau of the Public Debt (including funds to BPD to support infrastructure upgrades), and \$45,000 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 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 (\$94,000); maintenance of the Review Commission’s information technology system (\$53,000); 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 (\$32,000), library operations (\$60,000), training and other requirements to support the agency’s mission.

26.0 Supplies and Materials

		<u>Change FY 2012-FY 2013</u>	
<u>FY 2012</u>	<u>FY 2013</u>	<u>Amount</u>	<u>%</u>
\$45,000	\$43,000	-2,000	-4.4

The amount of \$43,000 is requested for supplies and materials in FY 2013, including general office supplies (\$21,000) and information technology supplies and software (\$22,000).

31.0 Equipment

		<u>Change FY 2012-FY 2013</u>	
<u>FY 2012</u>	<u>FY 2013</u>	<u>Amount</u>	<u>%</u>
\$128,000	\$122,000	-6,000	-4.7

The amount of \$122,000 is required for equipment in FY 2013. 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 <sup>1</sup>
1997	\$7,753,000	\$7,753,000	\$7,753,000	\$7,738,000 <sup>2</sup>
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 <sup>3</sup>
2000	\$8,500,000	\$8,100,000	\$8,500,000	\$8,470,000 <sup>4</sup>
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 <sup>5</sup>
2003	\$9,577,000	\$9,577,000	\$9,577,000	\$9,673,000 <sup>6</sup>
2004	\$10,115,000	\$10,115,000	\$9,610,000	\$9,863,000 <sup>7</sup>
2005	\$10,516,000	\$10,595,000	\$10,595,000	\$10,510,240 <sup>8</sup>
2006	\$10,510,000	\$10,510,000	\$10,510,000	\$10,404,900 <sup>9</sup>
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 <sup>10</sup>
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 <sup>11</sup>
2012	\$12,773,000	\$11,689,000	\$11,689,000	\$11,689,000 <sup>12</sup>

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

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

<sup>3</sup> Reduced to \$8,092,000 by H.R. 1664

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

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

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

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

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

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

<sup>10</sup> Reduced to \$10,509,141 by P.L. 110-161

<sup>11</sup> Reduced to \$11,688,576 by P.L. 112-10

<sup>12</sup> Reduced to \$11,666,908 by P.L. 112-74



**Full Time Positions  
by Function**

	<u>FY 2011</u> Actuals	<u>FY 2012</u> Estimated Actuals	<u>FY 2013</u> Estimate
<b>Administrative Law Judge:</b>			
AL-1	0	0	0
AL-II	1	1	1
AL-III	10	10	11
GS-14	3	2	4
GS-13	0	2	0
GS-12	2	1	1
GS-11	2	2	2
GS-9	1	1	1
GS-8	<u>5</u>	<u>5</u>	<u>5</u>
<i>Sub-total</i>	24	24	25
<b>Commission:</b>			
Executive Level III	1	1	1
Executive Level IV	1	2	2
ES-00	2	2	2
GS-15	4	5	5
GS-14	5	5	7
GS-13	5	5	5
GS-12	1	2	1
GS-11	4	5	4
GS-10	1	1	1
GS-9	0	1	1
GS-8	1	0	1
GS-7	<u>0</u>	<u>1</u>	<u>0</u>
<i>Sub-total</i>	25	30	30
<b>Office of the Executive Director:</b>			
ES-00	0	1	1
GS-15	2	1	2
GS-14	2	2	2
GS-12	1	2	2
GS-11	3	2	2
GS-9	0	0	0
GS-7	0	0	0
GS-6	<u>1</u>	<u>1</u>	<u>1</u>
<i>Sub-total</i>	9	9	10
<b>Total full-time positions:</b>	<b>58</b>	<b>63</b>	<b>65</b>