

Office of Hearings and Appeals

Program Mission

The Office of Hearings and Appeals (OHA) conducts all of the Department of Energy's adjudicative processes and provides various administrative remedies.

OHA's adjudications support the Department's Corporate Management goals in the following ways. OHA conducts hearings regarding the eligibility of DOE employees and DOE contractor employees to hold security clearances. OHA assists DOE and National Nuclear Security Administration (NNSA) efforts to ensure only qualified individuals hold security clearances. This activity provides direct support to the Department's national nuclear security goal and plays a key role in helping the Department meet its Corporate Management objective to ensure that only extremely reliable individuals are allowed access to classified information and nuclear materials. OHA also investigates and holds evidentiary hearings in cases involving "whistleblower" complaints filed by any of the Department's 100,000 contractor employees. Thus, OHA directly supports the Department's Corporate Management objective to demonstrate efficient, effective, and economical management of the Department's human capital, financial resources, and physical assets. OHA also considers appeals of adverse DOE determinations on requests for information submitted under the Freedom of Information and Privacy Acts. It issues determinations on requests for exception based upon claims of hardship or inequity resulting from the application of any DOE order, rule, regulation or other requirement. OHA will adjudicate all Competitive Sourcing Appeals under OMB Circular A-76 for the Department. This activity will help the Department to meet its Corporate Management goal by ensuring that the President's Competitive Sourcing Initiative is fairly and effectively implemented. OHA also has been assigned responsibilities with regard to the soon to be proposed Scientific Integrity regulations. By providing opportunities for scientific researchers to have a hearing concerning allegations of misconduct, OHA directly supports the integrity of the Department's overall science program, including helping the Nation obtain clean, affordable, and abundant energy. Other responsibilities include considering appeals of determinations by the Office of Civilian Radioactive Waste Management of payments-equal-to-taxes for eligible jurisdictions, and of determinations by the Office of Environmental Management concerning contributions to, and reimbursements from, the Uranium Enrichment Decontamination and Decommissioning Fund. OHA is also responsible for resolving appeals under the newly adopted Energy Employees Occupational Illness Compensation Program Act of 2000.

Strategic Objectives

CM5: Reduce adverse security incidents, worker injuries, and environmental releases through policy development, counterintelligence, intelligence, and oversight of the Nation's energy infrastructure, nuclear weapons, materials, facilities and information assets. This strategic objective is supported by the following Program Strategic Performance Goals:

- Ensure that only extremely reliable individuals are allowed access to classified information and nuclear materials.

Performance Indicator

Performance is measured by number of cases resolved, percentage of cases resolved within regulatory deadlines, number of cases affirmed vs. number reversed on appeal to Federal courts.

Annual Performance Results and Targets

FY 2002 Results	FY 2003 Targets	FY 2004 Targets
OHA resolved 89 security clearance cases. Of these, 85 percent were resolved within 30 calendar days after receipt of the hearing transcript, within limited extensions of time given by the Director or were dismissed.	Upon receipt of security clearance cases, OHA will resolve 90 percent of these cases within 30 calendar days after receipt of the hearing transcript, within limited extensions of time given by the Director or will be dismissed.	Upon receipt of security clearance cases, OHA will resolve 90 percent of these cases within 30 calendar days after receipt of the hearing transcript, within limited extensions of time given by the Director or will be dismissed.

CM1: Achieve effective and efficient management of the Department of Energy by implementing the President's Management Agenda initiatives on Strategic Management of Human Capital; Competitive Sourcing; Improved Financial Performance; and Budget and Performance Integration.

- Ensure that DOE provides information to the public.

Performance Indicator

Performance is measured by number of cases resolved, percentage of cases resolved within regulatory deadlines, number of cases affirmed vs. number reversed on appeal to federal courts.

- Resolve allegations of scientific misconduct involving DOE-sponsored research.

Performance Indicator

Performance is measured by number of cases resolved, percentage of cases resolved within regulatory deadlines, number of cases affirmed vs. number reversed on appeal to Federal courts.

- Reduce the risk that employers may retaliate, so that contractor employees feel at liberty to accurately assess and speak out about health and safety concerns at DOE facilities.

Performance Indicator

Performance is measured by number of cases resolved, percentage of cases resolved within regulatory deadlines, number of cases affirmed vs. number reversed on appeal to Federal courts.

Annual Performance Results and Targets

FY 2002 Results	FY 2003 Targets	FY 2004 Targets
OHA held on-site hearings and otherwise resolved 27 whistleblower cases.	OHA will conduct investigations and process all whistleblower complaints.	OHA will conduct investigations and process all whistleblower complaints.
OHA resolved 71 Freedom of Information and Privacy Act cases. Of these 95 percent were resolved within the regulatory deadlines or within limited extensions of time given by the appellants.	Upon receipt of Freedom of Information and Privacy Act cases, OHA will resolve 95 percent of these cases within the regulatory deadline or within limited extensions of time given by the appellants.	Upon receipt of Freedom of Information and Privacy Act cases, OHA will resolve 95 percent of these cases within the regulatory deadline or within limited extensions of time given by the appellants.
OHA has worked with the Office of Science in drafting the Department’s proposed scientific misconduct regulations.	OHA conduct investigations of all referred scientific misconduct complaints.	OHA conduct investigations of all referred scientific misconduct complaints.

OHA Personnel Security Cases Received

	<u>Hearings</u>	<u>Appeals</u>
FY 2002	91	23
FY 2003 (est.)	98	0
FY 2004 (est.)	104	0

Towards the CM5 objective, OHA issues timely, high quality decisions that consider and balance the facts, the Congressionally mandated objectives underlying each proceeding, the rights and interests of individual litigants, and the interests of customers, stakeholders and concerned parties such as the public, State and Federal governments. In cases involving access to classified information and other secure materials, the employment interests of an individual employee are weighed and balanced against vital national security interests (which allow access only to trustworthy employees). Insofar as whistleblower complaints are concerned, the interests of the Department lie in promoting an atmosphere in which employees may raise concerns about fraud, waste, abuse, safety and health without fear of retaliation, while ensuring that DOE’s contractors may manage their operations in the most efficient manner possible. All funding for OHA is for Program Direction, which provides for the Federal staffing resources and associated expenses required to carry out OHA’s mission.

Significant Program Shifts

- Based upon this factor and increasing investigation activity, OHA projects that its request for hearings and security case receipts will increase by approximately 5 percent in FY 2004. To date, these increased case receipts primarily reflect increased security activity at the Albuquerque Operations Office. The Office will receive fewer appeals due to changes in the regulations regarding appeals from Hearing Officer decisions in security clearance cases.

- OHA continues to provide the adjudications underlying DOE's Contractor Employee Whistleblower Protection Program. In its role in promoting an environment wherein workers can freely raise material health and safety concerns, OHA advances worker safety and health throughout the DOE complex. OHA, in its adjudications, seeks to balance the public interest in promoting a workplace where workers are free to express concerns without fear of retaliation with the need for DOE contractors to be able to manage their resources as efficiently as possible. OHA, therefore, protects workers against reprisals and helps to identify meritorious cases involving workplace health and safety, fraud, waste, abuse or mismanagement.
- OHA continues to maintain its record of resolving Freedom of Information Act appeals on a timely basis, supporting the parallel goals of DOE transparency and of energy-stakeholders' needs to access information. This is especially important in light of constrained resources and increased focus on energy supply and generation.
- The Department has adopted regulations to implement Subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000. OHA is designated as the appellate authority in deciding which claims are sent to physician panels for review and in making the final DOE determination in cases where contractor employees seek DOE's help in filing a claim for worker's compensation based on illness or death caused by the exposure to a toxic substance while employed at a DOE facility. DOE's Office of Worker Advocacy has received 12,000 requests for assistance, and it has just begun issuing determinations. As of December 31, 2002, we have received 16 appeals of those determinations.
- At the request of the Office of Competitive Sourcing, ME-2.3, OHA will adjudicate all Competitive Sourcing Appeals under OMB Circular A-76. OHA will entertain appeals and write a decision and recommendation that will form the basis for final agency action by the Executive Steering Council (Secretary, Deputy Secretary, Under Secretary and ME-1). It is impossible to predict how many A-76 appeals to expect, and how complex they will be. However, in view of the expected audience for these decisions, and their high importance to the Department, these appeals will require a substantial amount of OHA resources. These cases should begin to arrive by the third quarter of FY 2003.
- The Department is implementing by regulation the government-wide policy on research integrity. These regulations will establish a process by which researchers may respond to claims of research misconduct and will apply to all research funded by the Department wherever it occurs, including the National Laboratories and the NNSA. OHA is designated to provide both investigatory and adjudicatory services under those regulations, similar to the services OHA already provides for the Contractor Employee Protection Program.

Funding Profile

(dollars in thousands)

	FY 2002 Comparable Appropriation	FY 2003 Request	FY 2004 Request	\$ Change	% Change
Office of Hearings and Appeals					
Subtotal, Office of Hearings and Appeals.....	2,890	2,933	3,797	864	28.0%
Use of prior year balances	-33				
Total, Office of Hearings and Appeals.....	2,857	2,933	3,797	864	28.0%
Additional net budget authority to cover the cost of fully accruing retirement (non-add)....	(264)	(203)	(203)	(0)	(0.0%)

Public Law Authorizations:

- P.L. 107-107, "National Defense Authorization Act of FY 2002"
- P.L. 89-554, "Freedom of Information Act"
- P.L. 93-579, "Privacy Act of 1974"
- Atomic Energy Act of 1954

Funding Schedule

(dollars in thousands)

	FY 2002	FY 2003	FY 2004	\$ Change	% Change
Salaries and Benefits.....	2,260	2,300	3,031	731	29.2%
Travel ^a	77	80	80	0	0.0%
Support Services.....	20	20	20	0	0.0%
Other Related Services.....	533	533	666	133	25.0%
Total, Program Direction.....	2,890	2,933	3,797	864	28.0%
 Additional net budget authority to cover the cost of fully accruing retirement (non-add).....	 (264)	 (203)	 (203)	 (0)	 (0.0%)

^a FY 2002 Rescission in the amount of \$3,000 has been taken from travel.

Detailed Program Justification

(dollars in thousands)

	FY 2002	FY 2003	FY 2004
Salaries and Benefits	2,260	2,300	3,031
<p>Funding supports 21 FTEs in FY 2004 and also includes costs for pay raises and promotions.</p>			
Travel	77	80	80
<p>For transportation to DOE field sites to conduct hearings on cases and whistleblower investigations.</p>			
Support Services	20	20	20
<p>Funding for computer support of the office information system and for assistance in maintaining OHA's Home Page on the Internet, which allows rapid public access to the office's publicized decisions. OHA utilizes computer information systems to improve management and promote efficient use of resources, and it promptly (within 24 hours) publishes OHA decisions and findings on its publicly accessible, customer-friendly and increasingly visited website. OHA also regularly publishes the Federal Energy Guidelines as a major research tool for both DOE and the public.</p>			
Other Related Expenses	533	533	666
<p>This category includes funding for employee training, charges by the Working Capital Fund for base services: rent, utilities, telephone, supplies, postage, building operations, photocopies, telecommunications, printing (including publication of federal register notices, and printing of decisions), and automated office support system support and maintenance. OHA also pays for certain services directly, including timesharing (Westlaw) and purchases of computer equipment and software.</p>			
Total, Program Direction	2,890	2,933	3,797

Explanation of Funding Changes

FY 2004 vs. FY 2003 (\$000)
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Salaries and Benefits

FY 2004 funding change increase includes pay raises, promotions and to support 4 additional FTEs..... +731

Other Related Expenses

Increase in FY 2004 funding is needed to cover increased costs for items such as rent, utilities, telephone, supplies, postage, building operations, photocopies and telecommunications.. +133

Total Funding Change, Program Direction..... +864