



**Federal Mine Safety and Health Review Commission
Contingency Plan
Agency Operations in the Absence of Appropriations
September 30, 2022**

In accordance with A-11, section 124.2, the Federal Mine Safety and Health Review Commission plans to enact an orderly shutdown of the Commission in the absence of appropriations is summarized in detail below.

Lapse Plan Summary Overview	
Estimated time (to nearest half day) required to complete shutdown activities:	0.5 days
Total number of agency employees expected to be on board before implementation of the plan:	59 employees
Total number of agency employees expected to be furloughed under the plan (unduplicated count):	48 employees
Total number of employees to be retained under the plan for each of the following categories (may include duplicated counts):	
Compensation is financed by a resource other than annual appropriations:	0 employees
Necessary to perform activities expressly authorized by law:	8 employees
Necessary to perform activities necessarily implied by law:	3 employees
Necessary to the discharge of the President's constitutional duties and powers:	0 employees
Necessary to protect life and property:	11 employees
Brief summary of significant agency activities that will continue during a lapse:	
The Commission will adjudicate only those Federal Mine Safety and Health Act of 1977 disputes that arise from a mine emergency or where there is a reasonable likelihood that either the safety of life or the protection of property would be compromised in some significant degree by failure to provide prompt adjudication.	
Brief summary of significant agency activities that will cease during a lapse:	
All other agency activities except as noted above will cease during a lapse, regardless of its duration.	

1. OVERVIEW

The purpose of this instruction is to establish procedures to govern the operations of the Federal Mine Safety and Health Review Commission (FMSHRC) in the event of a lapse in appropriations. All agencies are required to maintain a contingency plan in the event of an appropriations hiatus.

The Antideficiency Act restricts the conduct of business by agencies during a lapse of appropriations. The Antideficiency Act generally prohibits agency heads and their employees from making or authorizing expenditures or obligations in excess of appropriations; making or authorizing expenditures or obligations of funds required to be sequestered under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985; and accepting voluntary services for the United States (US) or employing others to perform personal services in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property. Violations of the Antideficiency Act can result in administrative and criminal penalties.

2. SCOPE

This instruction applies to all offices and employees within FMSHRC.

3. POLICY

In the event of an appropriations hiatus, it is the policy of FMSHRC to:

- A. Commence the orderly and expeditious shutting down of all but emergency FMSHRC functions by securing files, property, and office facilities.
- B. Ensure that FMSHRC meets its responsibilities to the parties in current case proceedings consistent with the Antideficiency Act.
- C. Ensure that FMSHRC employees are fully informed as to the reasons for the shutdown; and that payroll and other employee benefit responsibilities are met.

4. OPERATIONS

This plan provides FMSHRC the required flexibility to: protect Federal legal actions already taken (but not pursue new cases) and to deal with events that might occur during a shutdown. Here are the main points of the plan:

- A. The plan assumes that Headquarters (HQ) will have a minimal staff present. The current plan calls for the Chair and 4 Commissioners (currently 1 Commission seat is vacant), the Chief Operating Officer, the General Counsel, the Chief Administrative Law Judge, the Director of Information Technology, the Supervisory Attorney Advisor, and the Acting Executive Director, a potential total of 11 employees
- B. Approximately 48 employees will be furloughed if there is a lapse in our appropriations for FY 2023.

5. RESPONSIBILITIES

The plan assigns the following responsibilities:

- A. The **Chair and Commissioners** are responsible for ensuring that FMSHRC offices take all necessary actions related to shutdown activities.
- B. The **Chief Operating Officer** is responsible for ensuring that all necessary and appropriate actions are taken regarding administrative activities to ensure the orderly and expeditious shutdown of FMSHRC activities. These actions include the issuance of appropriate announcements and directives and implementing the contingency plan.
- C. The **General Counsel** is responsible for ensuring that the Office of the General Counsel staff take all necessary actions related to shutdown activities. The General Counsel will continue to provide the minimal level of legal support necessary for otherwise excepted activities of the Commission and its operating units. This includes legal advice incidental to emergency functions that relate to the safety of human life or the protection of property, including that related to ongoing litigation unable to be suspended, and administrative law functions related to excepted Commission activities.
- D. The **Chief Administrative Law Judge** is responsible for ensuring that the Office of the Chief Administrative Law Judge staff take all necessary actions related to shutdown activities. Also, provide emergency adjudication and monitor pleadings for those relating to a mine emergency or implicating a reasonable likelihood that either the safety of life or the protection of property would be compromised in some significant degree by failure to provide prompt adjudication
- E. The **Director of Information Technology** will continue to execute and complete critical IT duties, responsibilities, oversight, and coordination across FMSHRC in support of otherwise excepted activities and functions. Coordination with IT contractors to prevent potential threats to the security, confidentiality and integrity of agency information and information systems.
- F. The **Supervisory Attorney Advisor** will act as docket clerk to maintain the basic functions of the eCMS filing system to facilitate the continued operation in the event of emergency hearings and to prevent destruction of information or release of confidential information.
- G. The **Acting Executive Director** will perform only limited 'excepted' and 'necessarily implied' functions, to include 1) determinations, in consultation with the Chairman and Commissioners, as to what is excepted or necessarily implied work; 2) administrative work necessary to disburse benefit payments under entitlement programs for which an indefinite appropriation provides the funding for the benefits

All Agency Employees are responsible for taking appropriate action, consistent with the guidance given in this contingency plan, regarding the orderly shutdown of activities. When there is reason to believe that a shutdown is likely to occur, management will ask all FMSHRC employees to update, if necessary, their contact information.

6. STAFF RETAINED AFTER SHUTDOWN

Presidential Appointees (PAS) are excepted by statute and will constitute the core of the Headquarters staff available to evaluate situations as they arise and determine the appropriate response:

- 1 – Chair (PAS)
- 4 – Commissioners (PAS)

*Above numbers are flexible due to their staggered tenures.

Advisory staff will augment the core group:

- 1 – Chief Operating Officer
- 1 – General Counsel
- 1 – Chief Administrative Law Judge
- 1 – Director, Information Technology
- 1 – Supervisory Attorney Advisor
- 1 – Executive Director (Acting)

The Advisory staff will assist in ensuring the orderly shutdown of operations and will also identify and determine how to address emergency situations affecting ongoing federal law enforcement activities or posing an imminent threat to human life and the protection of property. The Commission has determined that any emergencies requiring immediate attention can be identified at the headquarters level and will have no excepted personnel in any of its field offices retained for that purpose. Additional headquarters and/or field staff may be called to handle emergencies arising during an appropriations lapse.

7. RESUMING OPERATIONS

Once operations are restored, furloughed employees will be notified via personal phone or personal email to report to work the next day and resume operations. Supervisors will allow the use of annual leave, compensatory time off, or credit hours if reporting to work on the day specified by the agency is not possible for employees to return to work. All Commission functions, including oversight and issuance of contractor work orders will resume immediately after the furlough ends.

8. GENERAL INFORMATION

Use of agency information technology systems, communications systems, or other resources during period of a shutdown: No agency employee shall use FMSHRC information technology systems, communications systems, or other resources during the period of a shutdown unless they are designated as an excepted employee. Non-essential information technology usage is prohibited.