



JAN 19 2018

MEMORANDUM FOR KATE S. O'SCANNLAIN
Solicitor of Labor

FROM: *For* DAVID ZATEZALO
Assistant Secretary for
Mine Safety and Health

A handwritten signature in blue ink that reads "Wayne D. Palmer".

SUBJECT: Contingency Plan for Excepted Functions
In the Absence of Appropriations

If there is no FY 2018 appropriations bill for the Department of Labor or FY 2018 Continuing Resolution, the Mine Safety and Health Administration (MSHA) would continue key functions which directly involve protecting against imminent threats to human life in the Nation's mines, and which are necessary for the protection of government property. Mining is an inherently dangerous activity, and Congress recognized the need for effective means and measures to prevent death and serious physical harm resulting from dangerous mining conditions and practices, including imminent dangers. Accordingly, in Section 103(a) of the Mine Act, Congress provided that MSHA "shall make inspections of each underground coal or other mine in its entirety at least four times a year, and of each surface coal or other mine in its entirety at least two times per year." These regular inspections, known as twos and fours, are required by statute. MSHA will continue to conduct regular inspections—twos and fours—during a lapse of funding. In our opinion, these excepted functions meet the Department of Justice test of reasonable likelihood that safety of life and property would be compromised if the functions are not performed.

The attachment describes excepted activities, and identifies the minimum number of excepted employees who will be required to perform these functions. If unforeseen emergencies occur, such as a mine disaster, additional employees would be identified to work for the duration of the emergency.

During a lapse in appropriations, MSHA will suspend all other operations and its staff will be furloughed. I have been notified of the names of the individuals performing the activities set forth below.

MINE SAFETY AND HEALTH ADMINISTRATION
EXCEPTED ACTIVITIES AND EMPLOYEES
January 19, 2018

Excepted Activities:

I. Inspections of targeted mines and specific hazards; investigations of accidents and miners' complaints, and sample analysis.

During a funding lapse, MSHA will perform certain activities which, if not performed would significantly compromise the safety of human life in the Nation's mines. Mining is an inherently dangerous activity, and Congress recognized the need for effective means and measures to prevent death and serious physical harm resulting from dangerous mining conditions and practices, including imminent dangers. Accordingly, in Section 103(a) of the Mine Act, Congress provided that MSHA "shall make inspections of each underground coal or other mine in its entirety at least four times a year, and of each surface coal or other mine in its entirety at least two times per year." These regular inspections, known as twos and fours, are required by statute. MSHA will continue to conduct regular inspections—twos and fours--during a lapse of funding. MSHA will also perform targeted inspections at mines which have been prioritized based on the mine's history of the hazards that put miners' lives at risk. Hazard-specific inspections will also be conducted across the Nation to address those conditions and practices which have been recent key causes of death and serious injury. Additionally, investigations of accidents and miners' safety complaints and select sample analysis will continue because they represent potentially serious and imminent safety problems.

Number of Excepted Employees

	Regional	National	Total
Subtotal	800	0	800

II. Executive/managerial/supervisory direction; staff support.

MSHA will designate program officials in each geographical location where employees are performing the excepted activities described in Section one above, to provide executive/managerial/supervisory direction. Additionally, a limited number of excepted employees will provide clerical duties in support of excepted activities; or monitor the availability and performance of IT systems and services to ensure availability in support of excepted activities. The excepted positions below represent the minimum numbers needed to adequately support the functions described in Section one.

Number of Excepted Employees

	Regional	National	Total
Subtotal	229	13	242

III. Building security activities.

To ensure the protection of two MSHA-owned properties and proprietary product documentation housed at one of the facilities, MSHA will provide 24 hour security services at the Mine Academy and Triadelphia, WV facility.

Number of Excepted Employees

	Regional	National	Total
Subtotal	4	0	4

MINE SAFETY AND HEALTH ADMINISTRATION
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IV. Information Technology Support.

MSHA will designate information technology support personnel at MSHA headquarters in Arlington and assign similar responsibility at MSHA's devolution sites in Denver, CO and Beckley, WV, to coordinate network infrastructure and maintain connectivity required for continuity of emergency operations and continuing target enforcement.

Number of Excepted Employees

	Regional	National	Total
Subtotal	2	1	3

V. Mine Plan Approvals.

MSHA performs certain plan review and approval activities which have a direct impact on miner health and safety. Plan revisions, as well as new plans dictated by changes in the mine conditions and mining practices, must be reviewed and approved for operators to continue safe operations.

Number of Excepted Employees

	Regional	National	Total
Subtotal	49	0	49

VI. Mine Emergency Operations Readiness.

MSHA's quick response to a mine emergency situation is critical in order to protect the safety and health of our Nation's miners. Excepted personnel are needed in order to ensure that vehicles and equipment are ready for deployment in the event of a mine emergency.

Number of Excepted Employees

	Regional	National	Total
Subtotal	1	0	1

Grand Total, MSHA Excepted Employees:

Number of Excepted Employees

	Regional	National	Total
Subtotal	1,085	14	1,099