

US ENVIRONMENTAL
PROTECTION AGENCY
CONTINGENCY PLAN
FOR SHUTDOWN



Lapse Plan Summary Overview	
Estimated time (to nearest half day) required to complete shutdown activities:	<i>4 hours (0.5 days)</i>
Total number of agency employees expected to be on board before implementation of the plan:	<i>16,205</i>
Total number of employees to be retained under the plan for each of the following categories:	
Compensation is financed by a resource other than annual appropriations:	<i>411</i>
Necessary to perform activities expressly authorized by law:	<i>135</i>
Necessary to perform activities necessarily implied by law:	<i>544</i>
Necessary to the discharge of the President's constitutional duties and powers:	<i>1</i>
Necessary to protect life and property:	<i>802</i>
Summary of significant agency activities that will continue during a lapse:	
<ul style="list-style-type: none"> • Protection of EPA land, buildings, equipment, and protection of research (preserving ongoing experiments). • Law enforcement and criminal investigations. • Emergency and disaster assistance. • Superfund response work, where a failure to maintain operations would pose an imminent threat to human life. Sites are evaluated at the time of shutdown. • Maintenance of laboratory instrumentation, controlled environments (i.e., freezers), lab animals, plants, and unique organisms necessary to preserve property and ensure critical operating requirements are not impaired. • EPA's emergency response readiness operation. • Legal counseling, litigation and law enforcement activities as required. • All obligation actions necessary to support excepted and exempted activities. • Exempted activities funded by unexpired appropriations from the Infrastructure Investment and Jobs Act (IIJA) and the Inflation Reduction Act (IRA), as well as activities excepted as necessary to avoid the prevention or significant deterioration of those IIJA-funded and IRA-funded functions. • Make timely payments to contractor and grantees where available funds were or are obligated for the contract or grant and either: (A) the employees necessary to make such payments are excepted for that purpose because, for example, failing to make the payment would prevent or significantly damage the agency's execution of a funded function, and/or would imminently threaten the safety of human life or the protection of property; or (B) where the employees necessary to make such payments are exempted. • Travel associated with excepted and exempted activities. • Personnel actions needed to support the furlough of employees and support of excepted and exempted personnel. • Maintain secure operation of Enterprise IT Infrastructure supporting non-mission critical systems and mission critical systems. • Full support of mission critical IT systems (systems necessary for excepted and exempted activities). 	

- Full support of www.epa.gov/lapse for communicating with furloughed employees and agency stakeholders.

Summary of significant agency activities that will cease during a lapse:

- Issuance of new grants and interagency agreements unless necessary for excepted or exempted activities.
- Processing of payroll beyond the last full/partial pay period for non-exempted employees.
- Update of the EPA website and other communication activities unless relevant to excepted or exempted activities.
- Conducting research and publication of research results unless necessary for exempted or excepted activities.
- Certain Superfund site activities where there is no imminent threat to human health and property, unless exempted.
- Civil enforcement inspections, unless necessary for excepted or exempted activities.
- Issuance of permits, guidance, regulations, and policies unless necessary for exempted or excepted activities.
- Approvals of pending state requests (i.e., authorized/delegated state-issued EPA permits, SIPs, TMDLs, Water Quality Standards)

Document Change Log

Date	Brief Summary of Changes
August 1, 2019	Agency data updated Modifications made to address the June 2019 update to Circular A-11 section 124
September 10, 2021	Biennial agency update
September 28, 2023	Biennial agency update

1. PURPOSE

This contingency plan provides general guidelines for the orderly handling of US Environmental Protection Agency operations in the event of a lapse in appropriations, which is typically caused by the lack of an enacted annual appropriations bill or continuing resolution. This plan does not apply to specific appropriations action by the Congress to deny a particular program funding. In the event of a “shutdown”, when EPA is required to implement this general guidance, supplemental government-wide guidance issued by the Office of Management and Budget, the Office of Personnel Management, and the General Services Administration also apply. This Contingency Plan for Shutdown, or Lapse Plan, applies to all agency employees and locations.

2. AUTHORITY & DEFINITIONS

The Antideficiency Act prohibits agencies from incurring financial obligations in excess or in advance of appropriations, as well as prohibits agencies from accepting voluntary services except where authorized by law. 31 U.S.C. §§ 1341, 1342. In the event of a lapse in appropriations, an agency may only incur financial obligations for those activities that are exempted or excepted.

Exempted: An agency may “exempt” activities from the shutdown if the activities have funds available. The two main types of exempted activities at EPA are: (1) those that are funded with unexpired appropriations where carryover funds remain unobligated, and (2) activities that are funded with appropriations that are not subject to the annual appropriations process. Approved exempted activities may only continue for as long as there are funds available to support the exempted activities. Where funds supporting an exempted activity are exhausted, the agency may only continue the activity if it also falls into one of the excepted categories.

Excepted: “Excepted” activities are those legally authorized to continue despite a lapse in appropriations. An agency may incur obligations in advance of appropriations if the activity is:

- a. **Necessary to perform activities expressly authorized by law:** A statute or other legal requirement expressly authorizes an agency to obligate funds in advance of appropriations.
- b. **Necessary to perform activities necessarily implied by law:** An agency is conducting activities where failing to perform the activity would “prevent or significantly damage” that agency’s or another agency’s ability to continue performing exempted activities; in such case, the authority to conduct the activity despite the lack of appropriations is “necessarily implied” by the authority to continue conducting the corresponding exempted activity.

Additionally, the Antideficiency Act “necessarily implies” authority for agencies to incur those obligations necessary to closing their agencies. Such activities are called “furlough activities” when performed during the first working day of the lapse in appropriations, and “shutdown activities” when performed for an extended period.

- 1) **Furlough Activities:** In the event of a lapse in appropriations, all personnel will report for duty on their first working day following the expiration of an appropriations act or a continuing resolution unless notified otherwise or unless they are on previously

approved scheduled leave, alternative work schedule day off, or holiday(s) that take place during the furlough period. Employees will complete orderly shutdown activities on the workday on which the employee had been scheduled to return to work. On that day, personnel will be advised to conduct an orderly termination of their activities. Such “furlough activities” include securing their workspace and documents; identifying any approved travel plans over the next 30 days; and entering their time into the agency’s time & attendance system, if required. The EPA estimates that these activities should take less than one-half workday (four hours) and these activities can be performed remotely unless notified otherwise. Following completion of furlough activities, all employees not designated to carry out exempted or other excepted activities will be furloughed and must depart following their dismissal.

2) **Shutdown Activities:** While most activities necessary for agency closure can be accomplished within four hours, some agency personnel may need to work longer to secure and shutdown EPA property and facilities, including the varied laboratory research facilities and experiments that EPA is conducting. The EPA expects the majority of such extended “shutdown activities” will be completed in less than five days. Personnel designated for the orderly shutdown of the agency will continue to report for duty until their shutdown tasks have been completed and will need to complete them as expeditiously as possible. Shutdown activities should be conducted in a manner whereby expedient reactivation of normal operations and activities may occur when funds are made available. Once the services of these employees are no longer required, shutdown personnel will also be furloughed. Any obligations for shutdown activities will be paid after a new appropriation is provided.

c. **Necessary to the discharge of the President’s constitutional duties and powers:** An agency is conducting activities that “assist the President in fulfilling his peculiar constitutional role.”

d. **Necessary to protect life and property:** Where suspension of the agency function would imminently threaten the safety of human life or the protection of property.

The policies and procedures detailed in this contingency plan are issued in accordance with OMB Circular A-11, Section 124; OMB Bulletin 80-14, dated August 28, 1980 (as amended by the OMB Director’s memorandum of November 17, 1981, and Supplement 1 to Bulletin 80-14, dated August 20, 1982). They are also consistent with OMB’s “Frequently Asked Questions During a Lapse in Appropriations” dated September 22, 2023, and opinions issued by the Department of Justice, Office of Legal Counsel.

3. GENERAL GUIDANCE

The following guidance applies to all agency appropriation accounts. In general, in the event of a lapse in appropriations, the EPA will stop incurring new obligations other than those supporting excepted or exempted activities. Guidance for specific financial areas is provided below.

- a. **Contract Obligations:** Unless necessary for excepted activities or programs funded by exempted resources, no new obligations for contracts, including the exercise of options and/or modification to add incremental funding, may be entered into beginning with the first day of a fiscal year when an appropriations act or a continuing resolution has not been enacted or on the first day immediately following the expiration of a continuing resolution and no new appropriations act or continuing resolution has been enacted. Options exercised prior to the start of the new fiscal year already contain a “subject to availability of funds” clause to provide for any lack of funding in the new fiscal year.

If a new contract obligation is necessary for an excepted or shutdown activity, Senior Resource Official (SRO) for the national program must consult with other organizations such as the Office of Mission Support (OMS) and the Office of the Chief Financial Officer (OCFO). The EPA may incur obligations necessary to pay costs incurred in conjunction with equitable adjustments for work stoppages on contracts as a shutdown activity.

Regarding preexisting contract obligations, contractors whose contract vehicles were funded prior to the lapse in appropriations that do not require interaction with federal employees who are not otherwise excepted or exempted may continue work until such time government interaction is necessary and/or funding is exhausted.

Consistent with OMB guidance issued on September 22, 2023, payment of contract invoices may occur only where available funds were or are obligated to the contract and either:

- (A) the Contracting Officer Representative (and/or other appropriate EPA employees necessary to make such payments) are excepted for that purpose because:
- (i) failing to make the payment would prevent or significantly damage the agency’s execution of a funded function;
 - (ii) failing to make the payment would imminently threaten the safety of human life or the protection of property;
 - (iii) failing to make the payment would impair the President’s constitutional duties and powers; or
 - (iv) making the payment despite a lapse in appropriations is expressly authorized by law;

or

- (B) the EPA employees necessary to make such payments are exempted.

- b. **Financial Assistance Obligations (Grants and Cooperative Agreements):** Unless necessary for excepted activities or programs funded by exempted resources, no new obligations for financial assistance (i.e. grants or cooperative agreements), including modifications to add incremental funding, may be entered into beginning with the first day of a fiscal year when an appropriations act or a continuing resolution has not been enacted, or on the first day immediately following the expiration of a continuing resolution and no new appropriations act or continuing resolution has been enacted.

Regarding preexisting financial assistance agreements, recipients of funded grants and cooperative agreements can typically continue work on their projects during any EPA

shutdown, provided performance does not require interaction with federal employees who are not otherwise excepted or exempted. Grant recipients currently approved to utilize the Automated Standard Application Payment (ASAP) system may make drawdowns of authorized obligated levels during a shutdown.

Consistent with OMB guidance issued on September 22, 2023, in the event EPA-employee involvement is required to effectuate a grant drawdown, that EPA-employee involvement may occur only if either:

(A) The EPA employees necessary to effectuate the drawdown are excepted for that purpose because:

- (i) failing to allow drawdown would prevent or significantly damage the agency's execution of a funded function;
- (ii) failing to allow drawdown would imminently threaten the safety of human life or the protection of property;
- (iii) failing to allow drawdown would impair the President's constitutional duties and powers; or
- (iv) allowing drawdown despite a lapse in appropriations is expressly authorized by law;

or

(B) the EPA employees necessary to effectuate the drawdown are exempted.

Financial assistance recipients must stop work if they reach a point at which they require the involvement or approval of federal employees who are not otherwise excepted or exempted. For example, recipient staff of non-excepted financial assistance agreements who are assigned to EPA facilities will not be allowed access to those facilities. If they can satisfactorily continue work off-site, the project can continue. Senior Environmental Employee (SEE) program enrollees will be notified of the lapse in accordance with their grant procedures. Additional guidance will be provided through the agency's SEE program manager.

Financial assistance recipients should maintain documentation of any allowable costs associated with the work stoppage.

- c. **Interagency Agreements:** Unless necessary for excepted activities or programs funded by exempted resources, no new obligations for interagency agreements (IAs), including modifications to add incremental funding, may be entered into beginning with the first day of a fiscal year when an appropriations act or a continuing resolution has not been enacted, or on the first day immediately following the expiration of a continuing resolution and no new appropriations act or continuing resolution has been enacted.

EPA program offices in conjunction with the Office of Grants and Debarment (OGD) and in consultation with the other agency will determine if work under any funds-in IAs is necessary for shutdown, excepted, or exempted activities. If not, work on such agreements will stop. Other agencies can continue to work on funds-out IAs where sufficient available funding exists on the IA. However, other agencies must stop work if they reach a point at which funds are exhausted and/or require involvement or approval of EPA employees who are not otherwise exempted or excepted. If the other agency is closed, that agency in consultation with EPA will

determine whether activities under funds-out IAs are necessary for excepted or exempted activities. Funds-out IA obligations for EPA’s “infrastructure costs” such as rent, telephone service, and other utilities that support excepted or exempted activities will continue to be incurred until appropriations have been provided. Funds-in and funds-out IAs that support excepted or exempted activities, such as Superfund response work and emergency and disaster assistance, will continue.

d. **Travel:**

General Travel

No travel is allowed during a lapse in appropriations, except for travel required for excepted or exempted activities. All personnel on official travel must return to their duty station as soon as possible, unless continued travel is necessary for excepted or exempted activities.

In order to request and complete travel for exempted or excepted activities during a lapse in appropriations and after carry-over funding has been exhausted, all offices must assign a senior official with the duty to approve all travel authorizations and vouchers. Since supervisors may not be exempted or excepted, a senior official would serve as the central point of contact for approving all travel related documentation. In addition, exempt or excepted travelers should be prepared to process their own travel authorizations and vouchers, as centralized travel preparers are not likely to be considered exempted or excepted employees.

Up until a lapse in appropriations has occurred and carry-over funding has been exhausted, all travel vouchers and payments will be processed in normal course of business. However, after all carry-over funding has been exhausted, only travel vouchers and payments will be processed for travel required for excepted or exempted activities. All hold-over travel vouchers and payments for non-exempted and non-excepted activities will be completed when the lapse in appropriations has ended. Travelers should complete and submit all travel vouchers as soon as possible to ensure no delays occur with the payment of vouchers.

Travel Cards

Employees are responsible for any charges to the travel card and should again ensure that they are submitting their vouchers within five days of the end of travel. It is anticipated that the General Service Administration will be working with the travel card bank to obtain an extended grace period for payments (this has been customary in past shutdowns). For more information on travel card activities during a shutdown, please go to [Frequently Asked Questions \(FAQs\) for the Federal Government Shutdown | Smartpay \(gsa.gov\)](#).

International Travel

In the event of a lapse in appropriations, the Office of International and Tribal Affairs will provide each Deputy Assistant Administrator and Deputy Regional Administrator a list of staff currently on international travel. The list will include a traveler’s hotel and emergency contact information for communication purposes.

Employees assigned overseas are not in travel status. Their overseas location is their permanent station. Employees in temporary quarters during the furlough will remain in temporary quarters. If these employees are not designated as excepted or exempted, they would not report to work. Employees on extended temporary duty (TDY) travel where a detail personnel action (SF52) was issued and funded should follow instructions given by the receiving office. The employee would not return to their home location during a shutdown.

Time and Attendance and Payroll Functions: OCFO's Office of Technology Solutions (OTS) must assure delivery of the time and attendance file to the agency's payroll provider to generate the payroll file for electronic transmission to the Department of the Treasury. Additionally, OTS will process the Labor Cost File received biweekly from the agency's payroll provider in the Compass Payroll Cost Allocation Module.

- 1) OTS will maintain staff to continue time and attendance processing, as well as the payroll cost allocation. The time and attendance and payroll team will continue reconciliation and closeout activities each pay period to ensure exempt employees are paid accurately and on time.
 - 2) If applicable, OTS will work closely with OMS during the duration of the shutdown to maintain the list of exempted/excepted employees who are required to work during shutdown and or furloughed employees whose status changed during shutdown to exempted/excepted and require PeoplePlus access.
 - 3) OTS will process time and attendance records for exempted employees for subsequent payroll processing during the shutdown.
 - 4) OTS will provide all employees prior to the initiation of any furlough action with instructions regarding the completion of time and attendance in the agency's electronic time and attendance system, PeoplePlus.
 - 5) **OTS will provide exempt and excepted employees guidance on how to complete their timecards during the shutdown.**
- e. **Financial Transactions:** OCFO's Office of the Controller (OC) will secure cash funds, receivables, collections, and all financial records. The processing of requests for payments from contractors, grantees, and IA recipients will be processed in accordance with OMB guidance.
- 1) OC staff, in consultation with the Office of General Counsel (OGC), will determine those financial activities that may continue in the absence of an appropriation.
 - 2) Instructions will be provided concerning operations of the agency's core financial management system for excepted or exempted activities prior to suspension of agency operations. The agency's core financial management system will be used to monitor obligations for excepted or exempted activities during a shutdown.

- f. **Personnel Activities:** EPA is authorized to incur obligations for its workforce to conduct exempted and excepted activities, including approximately one-half day (four hours) of furlough and shutdown activities estimated not to exceed five days.

4. GUIDANCE ON DETERMINING SHUTDOWN ACTIVITIES

The Assistant Administrator for OMS or designee will keep the EPA Administrator apprised of the agency's shutdown activities. The AA for OMS, and other appropriate offices designated within that office, will coordinate efforts as necessary with regional, headquarters, and field offices.

Each Senior Resource Official (SRO) will submit a list of personnel that would be necessary to perform excepted and exempted activities. When deciding which personnel should be on the list, SROs should consider the specific actions that would be necessary to affect an orderly shutdown of the agency, giving primary consideration to protecting life and safeguarding government property and records. SROs should also seek to consolidate excepted and exempted duties in as few employees as possible. Each SRO is responsible for informing their employees if they are on the list. OMS will maintain this information, including changes, and will be responsible for updating the Contingency Plan and summary information as appropriate.

The excepted and exempted personnel lists are subject to review and approval by OMS and OGC in consultation with OCFO. SROs should use the agency's enterprise Shutdown application to submit each person's name, the function each person will perform during shutdown, and under what category the employee is retained:

- Compensation is financed by a resource other than annual appropriations (exempted),
- Necessary to perform activities expressly authorized by law (excepted),
- Necessary to perform activities necessarily implied by law (excepted),
- Necessary to the discharge of the President's constitutional duties and powers (excepted), or
- Necessary to protect life and property (excepted).

Each SRO must also provide the list of names of the excepted and any exempted personnel to the facility manager at each EPA location. After shutdown activities are completed, only those employees designated as excepted or exempted personnel will be allowed into EPA facilities.

If the lapse in appropriations extends longer than five days, each SRO must periodically evaluate planned activities and reengage personnel when needed. For example, during an extended shutdown, a limited number of personnel may be recalled and tasked to perform additional shutdown activities that were not originally envisioned, such as the cancellation of meetings and events that are not excepted or exempted activities.

Additionally, each SRO from region or program may need to identify additional employees for excepted activities in an emergency that imminently threatens the safety of human life or the protection of property. These individuals will not be in a pay status prior to being recalled back to work and will be added to the list of excepted personnel after being recalled.

Each SRO is responsible for modifying their list of excepted and exempted personnel in accordance with direction from OGC, OMS, and OCFO. Modified personnel lists should be submitted to OMS as needed. EPA retains the authority to modify the number of personnel working on excepted or exempted activities during any period of shutdown. Changes to the number of excepted or exempted personnel to be retained under the plan will be included in the Lapse Plan Summary Overview. The shutdown personnel needed to be retained more than four hours are included as “necessary to perform activities necessarily implied by law”.

By default, any employee not excepted or exempted is furloughed.¹ Under the applicable regulations and OPM policy, employees do not need to be provided advance written notice of a furlough if the furlough is due to a lack of an appropriations act or a continuing resolution. However, the agency will make every effort to notify all employees affected by the furlough in advance and adhere to related collective bargaining agreements.

Furlough decision notices will be distributed to each employee and all personnel receiving furlough notices will be dismissed and directed not to report to work until an Appropriations Act or a continuing resolution is enacted. In addition to the furlough decision notice, employees will be provided a shutdown checklist to support their orderly shutdown and any supplemental information, such as a reminder to monitor www.epa.gov/lapse for updated information on the agency’s status. Additionally, supervisors must cancel any approved leave during a furlough. Additional guidance regarding leave with respect to excepted or exempted personnel is provided below.

If a furlough extends beyond 30 calendar days, the agency will issue a second 30-day furlough notice to all personnel not designated to carry out excepted or exempted activities. Furlough notices will be issued in 30-day increments until such time that an appropriation act or a continuing resolution is enacted. The furlough notices will be posted on www.epa.gov/lapse for download by employees. A notification will be issued via the agency’s Mass Alert and Notification System (MANS) alerting employees of the second (and subsequent) 30-day furlough notice posted to the website. In accordance with the Antideficiency Act, no employees on furlough will be authorized to work during the shutdown period.

- a. **Telework Activities and Alternate Work Schedules:** Employees should coordinate with their supervisors regarding telework, remote work, and alternative work schedules. All work must be stopped unless the activity is for an excepted or exempted activity, regardless of location or timing of the work.
- b. **Information Technology (IT) Systems:** Unless otherwise identified as a system supporting excepted or exempted activities, most agency IT systems should be scaled back to basic operational status, which would include all cybersecurity measures necessary to protect the agency’s IT infrastructure and data assets. This will ensure the protection of government records, that information and cyber security controls are in place, and assist in reactivating once the period of the shutdown is over.

¹ Note that Commissioned officers are employees of the Public Health Service. If the EPA has a lapse in appropriations, PHS officers will continue to work at the EPA because they are authorized by law to continue working.

The agency Chief Information Officer will identify which systems will be required for continued operation during the period of a shutdown. OMS will work with the senior information officials in each program and region to identify a list of these systems and provide guidance regarding how continued operation and security of those systems will be accomplished as well as the orderly shutdown and securing of other IT systems and devices.

5. GUIDANCE ON DETERMINING EXEMPTED ACTIVITIES

In the event of a lapse in appropriations, the agency will assess the availability of unexpired multiple and no-year appropriations as well as funds available from other sources. An agency may “exempt” activities from the shutdown if the activities have funds available.

Exempted activities may only continue if there are funds available to support the exempted activities. Personnel who perform exempted activities and who are exempted from the shutdown order will continue to report for duty and conduct their assigned responsibilities until available carryover funds are close to being fully obligated. If it determines there is sufficient funds for it to be practicable for the agency to operate until these appropriations and funds are close to being exhausted, it will do so. The agency would proceed with shutdown activities when there are no longer sufficient funds for it to be practicable for the agency to operate.

The two main types of exempted activities at EPA are: (1) those that are funded with unexpired appropriations where carryover funds remain unobligated, and (2) activities that are funded with appropriations that are not subject to the annual appropriations process.

- a. **Exempted Activities Funded by Carryover:** Where a multi-year or no-year appropriation has carryover available, the activities supported by that appropriation may be exempted until funding is exhausted to the point of being no longer practicable to operate.
 - 1) Example: Some of EPA’s accounts – such as Environmental Programs and Management (EPM) and Science and Technology (S&T) – expire after two fiscal years. So long as there are funds available in such a “multi-year” account, they may continue to be obligated for that program until it is no longer practicable to operate or the account expires, whichever comes first.
 - 2) Example: Some of EPA’s annual accounts – such as the annual Superfund appropriation account – are made available “until expended.” Therefore, so long as there are funds available in such a “no-year” account, they may continue to be obligated for that program until it is no longer practicable to operate.
 - 3) Example: Some of EPA’s supplemental appropriations – such as the Infrastructure Investment and Jobs Act (IIJA) and the Inflation Reduction Act (IRA) – made funds available to EPA for varying periods of time ranging from three to ten years, or in some cases “until expended.” So long as there are funds available in such an account, they may continue to be obligated for that program until it is no longer practicable to operate.

Note that amounts “appropriated” by a continuing resolution do not “carry over” when that continuing resolution expires, even if the continuing resolution funds have been previously apportioned to EPA by OMB. To support an exemption, funds must have been provided by a prior annual or supplemental appropriations act.

- b. **Activities Funded by Permanent Indefinite Appropriations:** Some of EPA’s funds are made available by “permanent indefinite” appropriations which are not subject to the annual appropriations process. Where funds are available in such accounts, they may continue to be obligated until it is no longer practicable to operate.
- 4) Example: EPA has the authority in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) § 4 to collect and spend “maintenance” fees paid by pesticide registrants annually to EPA as a condition of maintaining registration for their pesticide(s). Such spending authority is not conditioned on receiving permission annually in the appropriations act. Therefore, so long as there are funds available in that account, the program may continue to obligate such fee money for the purposes for which it is available until it is no longer practicable to operate.²
- 5) Example: EPA has the authority under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 122(b)(3) to enter into settlement agreements with potentially responsible parties that resolve CERCLA liability and may retain and use settlement proceeds in “special accounts” to carry out Superfund response actions at the site consistent with the terms of the settlement agreement. Such spending authority is not conditioned on receiving permission annually in the appropriations act. Therefore, so long as there are funds available in a special account, the program may continue to obligate such money for the purposes for which it is available until it is no longer practicable to operate.

6. GUIDANCE ON DETERMINING EXCEPTED ACTIVITIES

Within the guidance established by OMB Circular A-11, Section 124 (2022), agencies must decide what activities are “excepted,” meaning legally authorized to continue despite a lapse in appropriations. An agency may incur obligations in advance of appropriations if:

- a. **Necessary to perform activities expressly authorized by law:** A statute or other legal requirement expressly authorizes an agency to obligate funds in advance of appropriations.
- 1) Example: In the event of a lapse in appropriations, the Department of Justice (DOJ) typically expects EPA to continue to provide the legal or technical support necessary to meet any court deadlines or orders, including but not limited to filings, court appearances, and responses to discovery requests. In implementing this Contingency Plan, EPA will consult with DOJ and follow its guidance as to EPA activities that may continue

² Note that not all fee accounts are necessarily permanent indefinite appropriations as spending authority for fee accounts is often conditioned on receiving permission annually in an appropriations act, which would be absent during a lapse in appropriations. Programs considering spending appropriations derived from fees during a lapse in appropriations should consult with the Office of General Counsel.

notwithstanding a lapse in appropriations, the authority for which is expressly authorized by court order.

- 2) Example: If Congress were to enact a statute stating that EPA could incur obligations to carry out a certain activity notwithstanding the Antideficiency Act, EPA could conduct that activity despite a lapse in appropriations. Such authority is rare among civilian agencies.

- b. **Necessary to perform activities necessarily implied by law**: An agency is conducting activities where failing to perform the activity would “prevent or significantly damage” that agency’s or another agency’s ability to continue performing exempted activities; in such case, the authority to conduct the activity despite the lack of appropriations is “necessarily implied” by the authority to continue conducting the corresponding exempted activity.

Example: EPA is partnering with another federal agency who is not affected by the lapse to publish a joint notice of proposed rulemaking. EPA and the other agency determine that if EPA staff who would otherwise be furloughed do not continue to work on the joint rulemaking, it would prevent or significantly damage the other, funded agency’s ability to continue with the rulemaking. Therefore, the authority to incur necessary obligations for EPA staff to continue working on the joint rulemaking is necessarily implied by the other agency’s continued funding.

Example: EPA received significant appropriations under the Infrastructure Investment and Jobs Act (IIJA) and the Inflation Reduction Act (IRA). Those funds are available to EPA for varying periods of time ranging from three to ten years, or in some cases “until expended.” Because IIJA and IRA funds were “supplemental” to EPA’s regular, annual appropriations, some EPA employees who perform IIJA and/or IRA work draw their salaries from EPA’s regular annual appropriation, as opposed to IIJA or IRA funds themselves. Where the absence of such annually-funded employees would “prevent or significantly damage” the execution of an IIJA-funded or IRA-funded function, IIJA and IRA provide the necessary authority for EPA to incur obligations for those staff to continue working even though the account from which their salary is normally drawn has lapsed.

- c. **Necessary to the discharge of the President's constitutional duties and powers**: An agency is conducting activities that “assist the President in fulfilling his peculiar constitutional role”.
 - 1) Example: The Constitution vests the President with the exclusive power to nominate, and by and with the advice and consent of the Senate, appoint officers of the United States. EPA is authorized to incur obligations necessary for employees to prepare for the Senate confirmation hearing of a person nominated to be Administrator, because if the employees were not able to assist, then the President’s nomination and appointment power would be infringed.
 - 2) Example: The Constitution vests the President with certain powers regarding foreign relations. The Department of Justice, Office of Legal Counsel has opined that the conduct of foreign relations “essential to the national security” may continue in the event of a lapse in appropriations so that the President’s authority in this area is not infringed.

- d. **Necessary to protect life and property**: Where suspension of the agency function would imminently threaten the safety of human life or the protection of property. In order to be excepted under this rationale, there must be (1) an “articulable connection” between the financial obligations being incurred and the safety of life or protection of property; (2) a “reasonable likelihood” that safety of human life or protection of property would be compromised “in some significant degree” if the activity were not performed; and (3) the threat to human life or property must be “reasonably said” to be “demanding of an immediate response.” If protection of property is at issue, the property must be (1) government-owned, or (2) property “in which the government has an immediate interest,” or (3) property “in connection with which” the government has “some duty to perform.”
- 1) Example: Sites (e.g., Superfund) where failure to maintain operations, or failure to initiate an emergency removal in response to a release or threat of release of a hazardous substance or pollutant or contaminant would pose an imminent threat to human life.
 - 2) Example: EPA’s emergency response program serves as a safety net to states, local and private first responders for situations involving actual and/or threatened of environmental emergencies. In the event of a shutdown, HQ and regional offices should utilize existing procedures to maintain their phone and response on-duty on-scene coordinator(s) to maintain and ensure prompt support of environmental emergency responses that requires EPA attention and/or action.
 - 3) Example: Law enforcement personnel involved in activities designed to protect human life and property from imminent threat will be excepted for the time necessary to carry out such activities.
 - 4) Example: The EPA maintains a variety of laboratories. EPA will take necessary measures to ensure the physical integrity of the EPA’s research property is protected where, without these measures, the property would be damaged or destroyed. Personnel will be expected to ensure the physical protection of federal property, that controlled environments (such as freezers) will function and not be damaged, that scientific instrumentation will function and not be impaired, and that lab animals, plants, and other unique test organisms will not be damaged or destroyed.

The specific excepted activities, personnel, and level of support required based on the examples above will be determined by OMS in consultation with OCFO, OGC and appropriate program offices. The determination as to whether an activity qualifies as excepted may change depending on the duration of a shutdown.

Excepted personnel are excluded from furlough during shutdown **but only for the hours/days it takes them to perform their excepted activities.** If a function requires one hour per day, then the excepted employee may work for only one hour per day to perform only that excepted task.

7. GUIDANCE ON RESUMING ORDERLY OPERATIONS

OCFO will notify OMS and agency senior managers of enactment of the necessary funding mechanism (i.e., either a continuing resolution or an appropriations act). OMS will coordinate as necessary with the Office of Public Affairs, to communicate updated status reports and actions necessary to return to normal agency operations and to place status updates on the www.epa.gov/lapse website, and utilize the agency-wide mass alert notification system as appropriate. Once EPA receives notification that an appropriation has been approved or is imminent, OMS will begin contacting program/regional offices to begin calling back their start-up personnel necessary to resume orderly operations. The EPA has identified the following activities to resume orderly operations once appropriations are restored:

- a. **Communications**: OMS will coordinate with all programs and regions to ensure that information is ready upon employees return, including checklists or other aids to assist employees and managers with startup activities. The Office of Public Affairs, OMS, and OCFO will coordinate any special messaging needed to address specific situations that may arise in conjunction with the return of employees to duty.
- b. **Finance**: OCFO will coordinate with OMS to communicate any necessary information to employees regarding Budget, PeoplePlus/time and attendance, Compass and Concur systems.
- c. **Facilities**: OMS will oversee and coordinate the following activities.
 - 1) Building Systems: Coordinate with GSA/lessor to ensure all EPA building systems, including HVAC, are in full, regular operations prior to reopening buildings.
 - 2) Security Guard Force: Coordinate with Federal Protective Services (FPS) or security contractor to ensure security is fully staffed for re-opening.
 - 3) Janitorial/Cleaning Services: Coordinate with GSA/lessor/contractor to ensure all janitorial services resume regular operations.
 - 4) Building Access: Change access control schedules to business hours.
 - 5) Restore Key Contracts: Coordinate with acquisition personnel to lift stop work orders on pertinent contracts.
- d. **Information Technology Activities**: OMS will oversee and coordinate the following activities.
 - 1) Infrastructure Start-up: Prepare Enterprise IT Infrastructure to support normal operational workloads.
 - 2) User Support Help Desks: Ensure that all help desks are fully staffed and prepared for Day 1.
 - 3) Communications: Support activities to update web pages and messaging.
 - 4) Restore Key Contracts: Coordinate with acquisition personnel to lift stop work orders on pertinent contracts.
- e. **Procurement Operations Activities**: OMS will oversee and coordinate the following activities.
 - 1) Contracting officers will notify contractors of funds availability.

- 2) Begin cancelling “Stop Work Orders” for agency contracts related to security, facilities operations and maintenance, warehouse and mail services, and the IT activities cited above.
- 3) Issue guidance for returning to normal operations to agency contracting officers.

f. **Grants/Interagency Agreements Operations Activities:** OMS will oversee and coordinate the following activities.

- 1) Notify recipients of funds availability.
- 2) Issue guidance for returning to normal operations to the grants/IA community.

This contingency plan supersedes any other EPA guidance or order prior to this date.

Janet McCabe
Deputy Administrator

Date

PERSONNEL RESPONSIBLE FOR IMPLEMENTING/ADJUSTING PLAN

Kimberly Y. Patrick, Principal Deputy Assistant Administrator
Daniel Coogan, Director, Office of Resources and Business Operations

Office of Mission Support
US Environmental Protection Agency

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