

U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)

MD 4.5	CONTINGENCY PLAN FOR PERIODS OF LAPSED APPROPRIATIONS	DT-23-09
<i>Volume 4:</i>	Financial Management	
<i>Approved By:</i>	Christopher T. Hanson, Chair	
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<i>Issuing Office:</i>	Office of the Chief Financial Officer Division of Planning and Budget	
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<p>EXECUTIVE SUMMARY</p> <p>Management Directive (MD) 4.5, “Contingency Plan for Periods of Lapsed Appropriations,” has been updated with minor editorial changes. In addition, the NRC has revised this MD as part of its efforts to use more inclusive language in its publications. These changes, which include changing “Chairman” to “Chair” in some instances, are purely editorial and do not affect the meaning of the guidance in this document.</p>		

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I. POLICY

It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to establish and implement a contingency plan for periods of lapsed appropriations and provide guidance and instructions for suspending nonexcepted agency activities should Congress fail to appropriate funds for normal agency operations.

II. OBJECTIVES

- Implement the Office of Management and Budget (OMB) Bulletin 80-14, "Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations," August 28, 1980, as amended by Supplement No. 1, "Agency Operations in the Absence of Appropriations," August 20, 1982, in accordance with the Antideficiency Act and the opinion of the Attorney General of the United States.
- Provide guidance for the orderly suspension of nonexcepted activities when an exhaustion of funds is anticipated.
- Identify excepted functions that will continue although all available NRC funds have been exhausted.

III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

A. Chair

1. Ensures execution of the contingency plan.
2. Submits the list of excepted functions to OMB for transmittal to Congress, if necessary.
3. Approves the lists of employees to be furloughed and those to be retained when all available funds are exhausted for all offices except those of individual Commissioners and those of the Office of the Inspector General (OIG).
4. Authorizes dissemination of information about the status of the agency to the media, including those broadcast stations that carry emergency weather announcements.

B. Commissioners

1. Determine the excepted functions of the agency.
2. Approve the lists of employees for their respective staffs to be furloughed and those to be retained when all available funds are exhausted.

C. General Counsel (GC)

1. Assists the Commissioners in determining the agency's excepted functions.
2. Provides the Chair, or their designee, with legal advice during the period of lapsed appropriations.
3. Drafts the Commission's orders on issues arising from an exhaustion of funds.
4. Defends the Commission in judicial proceedings arising from lapsed appropriations or an exhaustion of funds.

D. Chief Financial Officer (CFO)

1. Directs and ensures the implementation of this management directive (MD).
2. Obtains policy guidance from OMB regarding lapses in appropriations.
3. Issues, in coordination with the Executive Director for Operations (EDO), a notice of general information on agency funding to all employees.
4. Determines the amount of funds available to operate at the earliest indication of funding difficulty.
5. Advises the Chair and the EDO of the availability of funds.
6. Advises the Inspector General (IG) on the availability of funds in the OIG appropriation.
7. Reallocates, to the extent permitted, all available funds to forestall the fund interruption date as long as possible before initiation of orderly shutdown activities.
8. Determines the time period within which the agency can operate before all available funds are exhausted and advises the Chair, the EDO, and the IG of this information.
9. Notifies the Chair and the EDO when all available funds are exhausted.
10. Issues a notice, in coordination with the EDO, to all employees indicating that all available funds have been exhausted.
11. Notifies the IG when all available funds are exhausted in the OIG appropriation.
12. Processes personnel payrolls for periods before fund interruption.
13. Establishes records of deferred payment for personnel retained during shutdown.

14. Takes necessary actions to adjust allotments and allowances, as appropriate, during periods of lapsed appropriations.
15. Coordinates with the EDO; the Director, Office of Administration (ADM); office directors; and regional administrators to ensure that no contractual or other financial obligations are entered into, other than those deemed excepted, after funds have been exhausted.
16. Ensures that funds are not disbursed once funds have been exhausted.

E. Inspector General (IG)

1. Coordinates with the EDO and the CFO to implement the contingency plan for periods of lapsed appropriations within OIG.
2. Determines the excepted functions for OIG.
3. Prepares the lists of OIG employees to be retained and those to be furloughed to ensure that each employee's name appears on either the retention list or the furlough list.
4. Approves the lists of OIG employees to be furloughed and those to be retained when all available funds are exhausted.
5. Prepares and directs issuance of furlough notices to all OIG nonexcepted employees.
6. Authorizes the processing of personnel actions in connection with the issuance of furlough notices for OIG.
7. Authorizes issuance of furlough notices to OIG employees who have been retained to perform shutdown functions, in accordance with MD 10.99, "Discipline, Adverse Actions, and Separations," if applicable, when shutdown functions are completed.
8. Reviews and adjusts, if necessary, the lists of OIG employees to be retained or furloughed when all available funds are exhausted.
9. Authorizes issuance of extended furlough notices to appropriate OIG personnel when the shutdown exceeds 30 days.
10. Authorizes issuance of stop-work orders to NRC OIG contractors, other than those deemed excepted, when all funds are exhausted.
11. Authorizes issuance of termination notices to NRC OIG contractors for contracts, other than those deemed excepted, when shutdown exceeds 30 days.
12. Directs all acquisition support agencies that have an interagency agreement with the NRC OIG to issue stop-work orders to NRC OIG commercial contractors, other than those deemed excepted, when all funds are exhausted.

F. Executive Director for Operations (EDO)

1. Proposes, in coordination with the CFO, revisions to the excepted functions of the agency for Commission approval.
2. Informs, in coordination with the CFO, offices of staff needed to perform excepted functions.
3. Obtains the Chair's approval before authorizing issuance of furlough notices to employees of all offices except Commissioner offices and OIG.
4. With the Chair's approval, reviews and adjusts, if necessary, the lists of employees to be retained or furloughed when all available funds are exhausted and transmits the lists to the Chief Human Capital Officer (CHCO).
5. Authorizes the Office of the Chief Human Capital Officer (OCHCO) to issue furlough notices to all employees.
6. When applicable, authorizes furlough notices to any employees retained for excepted functions (if or when these functions are completed).
7. Authorizes issuance of notices of extended furloughs if the shutdown exceeds 30 days.
8. With the Chair's approval, issues internal communications to employees (such as the EDO Update) on information relating to the status of appropriations and any NRC actions.
9. With the Chair's approval, issues communications to licensees, Government agencies, and other external stakeholders, as appropriate.

G. Director, Office of Administration (ADM)

1. Coordinates with the Director, Acquisition Management Division (AMD), ADM, the notification to NRC vendors regarding working status during a furlough.
2. Ensures the inventory and transfer of all personal and real property, including information assets, to the General Services Administration (GSA) or other designated agency, if agency operations must be permanently suspended.

H. Chief Human Capital Officer (CHCO)

1. Obtains policy guidance from the Office of Personnel Management (OPM) regarding lapses in appropriations.
2. Interacts, as appropriate, with the employees' union regarding actions that will affect bargaining unit employees.
3. Reviews lists of employees to be retained and those to be furloughed to ensure that each employee's name appears on either the retention list or the furlough list.

4. Reviews and directs issuance of furlough notices to all nonexcepted employees.
5. Directs the processing of personnel actions in connection with the issuance of furlough notices per guidance from OPM and the agency's payroll provider.
6. Issues furlough notices to employees who have been retained to perform shutdown functions, in accordance with MD 10.99, if applicable, as shutdown functions are completed.
7. Issues extended furlough notices to appropriate personnel when the shutdown exceeds 30 days.
8. Ensures the transfer of agency official personnel records, including related payroll records, to the National Archives and Records Administration (NARA), National Personnel Records Center, if agency operations must be permanently suspended.
9. Advises employees how the furlough may affect their rights and benefits, including appeal rights, effects on pay, leave, insurance, and possible eligibility for unemployment compensation. Advises managers on human resources issues that may arise during the furlough period.
10. In consultation with the Chair, issues standard email and voicemail messages for use by furloughed and excepted employees.

I. Chief Information Officer (CIO)

1. Ensures the transfer of agency official programmatic records to a designated records repository of successor agency, GSA, OPM, or NARA, if agency operations must be permanently suspended.
2. Maintains the information technology infrastructure and support for continuing the agency's excepted functions.

J. Office Directors and Regional Administrators

1. Prepare a list of employees to be furloughed by name, grade, job title, office, division, and branch.
2. Transmit to the EDO the list of employees to be furloughed.
3. Prepare a list of employees to be retained by name, grade, job title, function to be performed, office, division, and branch associated with the number of persons to be retained by each office for excepted functions.
4. Transmit to the EDO the list of employees to be retained for the excepted functions listed in Section II of Handbook 4.5.
5. Maintain excepted functions, consistent with EDO and CFO guidelines, as delineated in Section II of Handbook 4.5.

6. Identify contracts, Department of Energy (DOE) laboratory orders, interagency agreements, and international agreements for nonexcepted goods and services for work that will be stopped because of an exhaustion of funds.

K. Director, Acquisition Management Division (AMD), Office of Administration (ADM)

1. Coordinates with offices and regions to identify for the EDO, CFO, and IG active commercial contracts, DOE laboratory agreements, and other interagency agreements that should be classified as—
 - (a) Excepted work,
 - (b) Non-excepted work that should be allowed to continue without interruption because the contract is already sufficiently funded and the work does not require direct monitoring or technical direction by NRC staff during performance, and
 - (c) Non-excepted work that should cease on a specified date.
2. Notifies NRC vendors and servicing agencies, providing directions and instructions on how to proceed, pending a lapse in appropriations.
3. Determines if NRC commercial contracts should be terminated when the shutdown exceeds 30 days and notifies those vendors accordingly.

IV. APPLICABILITY

The guidance in this MD applies to and must be followed by all NRC employees. Where provisions of the “Collective Bargaining Agreement Between U.S. Nuclear Regulatory Commission and National Treasury Employees Union” conflict with this MD, the provisions of the collective bargaining agreement shall govern.

V. HANDBOOK

Handbook 4.5 provides guidance for implementing the contingency plan for periods of lapsed appropriations and for continuation of minimum excepted activities and support of these activities when all available funds have been exhausted.

VI. REFERENCES

Department of Justice (DOJ)

Opinion of the Attorney General of the United States, “Applicability of the Antideficiency Act Upon a Lapse in an Agency’s Appropriation,” 4A Op. O.L.C. 16, 43 Op. Att’y. Gen. 224, April 25, 1980.

Opinion of the Attorney General of the United States, “Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations,” 5 Op. O.L.C. 1, 43 Op. Att’y. Gen. 293, January 16, 1981.

DOJ Office of Legal Counsel, "Government Operations in the Event of a Lapse in Appropriations," August 16, 1995.

Executive Order

Executive Order 11953, "Assigning Emergency Preparedness Functions to the Energy Research and Development Administration and Nuclear Regulatory Commission," January 7, 1977.

Nuclear Regulatory Commission Documents

Collective Bargaining Agreement Between U.S. Nuclear Regulatory Commission and National Treasury Employees Union (current version available in the NRC Service Catalog at <https://intranet.nrc.gov/ochco/catalog/751>).

Inspection Manual Chapters (IMC)—

IMC 2506, "Construction Reactor Oversight Process General Guidance and Basis Document."

IMC 2515, "Light-Water Reactor Inspection Program—Operations Phase."

IMC 2600, "Fuel Cycle Facility Operational Safety and Safeguards Inspection Program."

IMC 2630, "Mixed Oxide Fuel Fabrication Facility Construction Inspection Program."

Management Directives—

4.2, "Administrative Control of Funds."

10.99, "Discipline, Adverse Actions, and Separations."

10.103, "Reduction in Force for Non-SES Employees."

NRC Continuity of Operations (COOP) Plan.

Reorganization Plan No. 1 of 1980 (5 U.S.C. App. 1).

SECY 77-316, "NRC's Essential Uninterruptible Functions During a National Emergency," June 14, 1977.

SRM-COMSECY-14-0017, "Excepted Functions During a Lapse in Appropriations," July 14, 2014.

Office of Management and Budget (OMB)

OMB Bulletin 80-14, as amended, "Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations," August 28, 1980, as amended by Supplement No. 1, "Agency Operations in the Absence of Appropriations," August 20, 1982.

OMB Circular A-11, "Preparation, Submission and Execution of the Budget," Section 124, "Agency Operations in the Absence of Appropriations."

OMB Memorandum, "Agency Operations in the Absence of Appropriations,"
September 30, 1980.

OMB Memorandum, "Agency Operations in the Absence of Appropriations,"
November 17, 1981.

OMB Memorandum M-91-02, "Agency Operations in the Absence of Appropriations,"
October 5, 1990.

OMB Memorandum M-95-18, "Agency Plans for Operations During Funding Hiatus,"
August 22, 1995.

OMB Memorandum M-18-05 - Revised, "Planning for Agency Operations during a
Potential Lapse in Appropriations," January 19, 2018.

Office of Personnel Management (OPM)

OPM Guidance and Information on Furloughs:
<http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/>.

United States Code

Antideficiency Act (31 U.S.C. 1341 et seq.).

Government Employee Fair Treatment Act of 2019 (Pub. L. 116-1).

Impoundment Control Act of 1974 (2 U.S.C. 682 et seq.).

Inspector General Act of 1978, as amended (5 U.S.C. §§ 401–424).

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I. INTRODUCTION

A. Background

1. On April 25, 1980, the Attorney General issued an opinion, “Applicability of the Antideficiency Act upon a Lapse in an Agency’s Appropriation,” that the language and legislative history of the Antideficiency Act (31 U.S.C. 1341 et seq.) unambiguously prohibits agency officials from incurring obligations in the absence of appropriations. The opinion also states that under the authority of the Antideficiency Act, Federal officers may incur minimal obligations necessary for the orderly termination of their agency’s functions. See Management Directive (MD) 4.2, “Administrative Control of Funds,” for further guidance regarding the Antideficiency Act.
2. On September 30, 1980, the Director of the Office of Management and Budget (OMB) circulated a memorandum, “Agency Operations in the Absence of Appropriations,” to the heads of all departments and agencies delineating activities that by law could continue during a period of exhaustion of funds. Essentially, the memorandum and subsequent guidance stipulated that agencies may continue to—
 - (a) Provide for national security, including the conduct of foreign relations essential to the national security and safety of life and property;
 - (b) Provide for the performance of existing contract obligations under no-year appropriations or multi-year appropriations that have not expired;
 - (c) Conduct essential activities to the extent that they protect life and property, including—
 - (i) Activities essential to ensure continued public health and safety, including safe use of food and drugs and safe use of hazardous materials;
 - (ii) Protection of Federal lands, buildings, equipment, and other property owned by the United States;
 - (iii) Law enforcement and criminal investigations;
 - (iv) Emergency and disaster assistance; and
 - (v) Activities that ensure production of power and maintenance of power distribution.

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- (d) Provide support services necessary to continue the above essential functions.
3. On January 16, 1981, the Attorney General issued another opinion, "Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations," regarding agency shutdown that clarified and broadened the scope of the April opinion. This opinion states that the Attorney General approved the activities listed in OMB's memorandum of September 30, 1980, that could continue during a period of exhaustion of funds.
- (a) The Attorney General's 1981 opinion expanded the functions permissible as part of an orderly shutdown to include—
- (i) Providing for the emergency protection of an agency's property by its own employees until such protection can be arranged by another agency with appropriations;
 - (ii) Complying with statutes providing for the rights of employees and the protection of Government information;
 - (iii) Transferring any matters within the agency's jurisdiction that are also under the jurisdiction of another agency that Congress has funded; and
 - (iv) Incurring obligations for the above functions only to the minimum extent necessary to fulfill an agency's legal duties.
- (b) The opinion also states that the level of obligations incurred for shutdown functions should be justified based upon the length of time that the shutdown is expected to last.
4. OMB Bulletin 80-14, as amended, "Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations," August 28, 1980, as amended by Supplement No. 1, "Agency Operations in the Absence of Appropriations," August 20, 1982, requires that agencies—
- (a) Develop plans for an orderly shutdown.
 - (b) Reallocate, to the extent legally permissible, all available funds to forestall the fund interruption date as long as possible.
 - (c) Begin shutdown activities when all available funds are exhausted.
 - (d) Limit obligations incurred once funds have been exhausted to those needed to maintain the minimum level of activities necessary to—
 - (i) Protect life and property,
 - (ii) Process the necessary personnel actions,
 - (iii) Process the payroll for the periods before fund interruption, and

-
- (iv) Provide for orderly transfer of custody of property and records in accordance with guidance from General Services Administration (GSA) and the Office of Personnel Management (OPM) for disposition.

B. NRC Funding

1. Since its inception, NRC's annual Salaries and Expenses appropriation has provided "no-year" funds. "No-year" funds are funds that can be used by the agency until they are completely exhausted. These prior-year funds can be used to fund the agency's necessary activities in periods of lapsed appropriations. Further, NRC has received some appropriations with 2-year limitations, resulting in a limited availability of prior-year funds during periods of lapsed appropriations.
2. Specific funding sources available to the NRC have different balances of prior-year funds. Activities funded by specific sources will exhaust available prior-year funds at different points in time and will be subject to shutdown at different points in time. Activities funded by reimbursable agreements with other Federal agencies or authorized reimbursements from non-Federal sources may continue during periods of lapsed appropriations, as long as adequate prior-year funding remains. For example, the processing of fingerprints for criminal background checks for licensee employees is funded from a reimbursable account from fees collected under the authority of 42 U.S.C. 2169, and which the NRC is authorized by 42 U.S.C. 5852(c) to retain and use until expended. Therefore, the fingerprint processing could continue during a shutdown to the extent that funds remain available in the account to support this activity.

C. NRC Employees' Rights, Obligations, and Benefits

NRC employees' rights, obligations, and benefits will be affected when NRC exhausts all of its available funds. In the event of a furlough, the Office of the Chief Human Capital Officer (OCHCO) will notify employees how the furlough may affect their rights and benefits including effects on pay, leave, insurance, appeal rights, and possible eligibility for unemployment compensation. NRC personnel will be divided into two categories: (1) employees in a nonwork, or furlough status; and (2) employees retained to perform excepted functions. Employees in the nonwork category will be furloughed at the time that the agency is required by law to maintain only minimum excepted functions.

1. The latter group will be retained to carry on those minimum activities that are necessary to protect the health and safety of the public. NRC employees engaged in shutdown activities are required to report for work to perform shutdown activities as necessary.
2. The following paragraphs summarize actions that could occur and employees' rights relating to these actions if all available NRC funds are exhausted.

(a) Pay

- (i) All employees will be paid for the period worked before the beginning of shutdown activities.
- (ii) No funds can be disbursed during the period when all NRC funds are exhausted and additional funds have not been appropriated.
- (iii) Employees who are furloughed will receive retroactive pay at the employee's standard rate of pay after funds are appropriated to end the shutdown.
- (iv) Employees who are retained after all NRC funds are exhausted will be paid for those hours worked under normally applicable pay rules when funds are appropriated.

(b) Furloughs

(i) Notice and Appeal Rights

- Employees who are furloughed for 30 days or less will generally be furloughed in accordance with MD 10.99, "Discipline, Adverse Actions, and Separations," and the "Collective Bargaining Agreement Between U.S. Nuclear Regulatory Commission and National Treasury Employees Union" (CBA). All employees who are furloughed will be provided notice of the furlough. When feasible, employees will receive advance written notice. If the furlough exceeds 30 days, employees in furlough status will have the furlough continue through issuance of a second written furlough notice.
- Employees who are furloughed for 30 days or less may appeal the action to the Merit Systems Protection Board (MSPB). Bargaining unit employees covered by the negotiated CBA may also choose to have the National Treasury Employees Union (NTEU) invoke arbitration. Bargaining unit employees may not use both. The election to invoke arbitration or appeal to MSPB are final.
- Consistent with treating furloughs of more than 30 days under reduction in force rules, employees who are furloughed for more than 30 days may appeal the action to the MSPB. Bargaining unit employees covered by the CBA may choose to grieve through the provisions of the negotiated collective bargaining agreement, as appropriate, but not both. The election to invoke arbitration or appeal to MSPB are final.

(ii) Service Computation

A furlough does not constitute a break in service. However, an extended furlough may affect the calculation of creditable service (e.g., retirement).

(c) Paid Time Off

All paid time off is canceled during the furlough period. Employees not at work performing excepted or shutdown activities will be in a furlough status.

II. EXCEPTED FUNCTIONS

A. Introduction

1. Furloughed employees may not perform voluntary services.
2. The Attorney General's opinion of January 16, 1981, and the OMB's memorandum of September 30, 1980, provide for the continuation of certain excepted activities and support of these activities when all available funds have been exhausted.
3. As a general matter, the Antideficiency Act prohibits, among other things, the acceptance of voluntary services, except for emergencies involving the safety of human life or the protection of property. The 1990 amendment to the Antideficiency Act clarifies that the "the term 'emergencies involving the safety of human life or the protection of property' does not include the ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property." As explained in the conference report on the bill, this action was taken to—

...guard against what the conferees believe might be an overly broad interpretation of an opinion of the Attorney General issued on January 16, 1981, regarding the authority for the continuance of Government functions during the temporary lapse of appropriations, and affirm that the constitutional power of the purse resides with Congress.

4. On August 16, 1995, the Department of Justice, Office of Legal Counsel, issued an opinion, "Government Operations in the Event of a Lapse in Appropriations," that updates the opinion of the Attorney General dated January 16, 1981. The 1995 opinion modifies the rules suggested for identifying those functions for which Government officers may employ personal services for compensation in excess of legal authority to read as follows:
 - (a) First, there must be some reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property.
 - (b) Second, there must be some reasonable likelihood that the safety of human life or the protection of property would be compromised, in some significant degree, by delay in performance of the function in question.

5. In addition, the opinion of August 16, 1995, concludes that the section of the Antideficiency Act that permits the acceptance of voluntary services for emergencies “applies only to cases of threat to human life or property where the threat can be reasonably said to be near at hand and demanding of immediate response.”
6. Therefore, to ensure that the NRC carries out its responsibility to protect the health and safety of the public, the list of functions in Section II.B of this handbook may be maintained subsequent to an exhaustion of funds. These functions will continue indefinitely unless or until the NRC is specifically directed by Congress to terminate all agency activities. Offices will retain only those employees necessary to perform these functions. This list of functions should be implemented consistent with the guidance regarding agency mission essential functions described in the NRC Continuity of Operations Plan (COOP). This list is meant to be as comprehensive as possible, but other legally authorized functions may be performed as circumstances dictate to protect life and property.

B. Continuation of Excepted Functions

1. The functions described below reflect Commission direction (SRM-COMSECY-14-0017) and represent excepted activities during an initial shutdown. Depending upon the circumstances of any events that may occur during restricted NRC operations, exceptions to perform additional activities may be made. Additionally, given the highly specialized nature of much of the NRC work, if an emergent issue arises where the excepted staff on duty does not have the expertise to address the situation, the NRC will call back relevant staff on an “as-needed” basis. In this case, the staff person would become excepted until the problem is resolved.
2. In the event of a lapse of appropriations, the Office of the Executive Director for Operations (OEDO) will develop a Concept of Operations shutdown plan to provide more detailed guidance on executing the excepted functions.
 - (a) Event Notification

Maintain readiness to accept notification calls regarding emergencies related to nuclear reactors or materials licensees.
 - (b) Emergency Response

Perform early actions to activate Emergency Operations Centers and provide prompt analysis and advice to licensees and State decisionmakers. The excepted function includes incident response teams when called in for an event.
 - (c) Site Operations

Maintain capability to send a team of experts to an emergency operations facility in the vicinity of an accident during the first hours following a major reactor incident.

(d) Resident Inspectors

Maintain resident inspection function. Additional guidance on the scope of resident inspector functions during periods of lapsed appropriations can be found in—

- (i) Inspection Manual Chapter (IMC) 2515, “Light-Water Reactor Inspection Program—Operations Phase”;
- (ii) IMC 2506, “Construction Reactor Oversight Process General Guidance and Basis Document”;
- (iii) IMC 2600, “Fuel Cycle Facility Operational Safety and Safeguards Inspection Program”; and
- (iv) IMC 2630, “Mixed Oxide Fuel Fabrication Facility Construction Inspection Program.”

(e) Region-Based Inspection Function

Maintain region-based inspection function as described in IMC 2515, IMC 2506, IMC 2600, and IMC 2630.

(f) Enforcement

Maintain the capability to issue Enforcement Orders to modify, suspend, or revoke licenses, or require specific actions by licensees or other persons.

(g) Allegations and Investigations

Maintain the capability to receive and respond to stakeholders and public concerns and the ability to investigate possible wrongdoing matters as necessary.

(h) Facility and Nuclear Reactor Security and Safeguards

Maintain the capability to process pressurized-water reactor and boiling-water reactor emergency licensing actions.

(i) Facility and Nuclear Materials Security and Safeguards

Assure the continued maintenance by licensees of security and safeguards programs at licensed facilities and for nuclear materials, including safeguards threat assessments and emergency licensing actions.

(j) Commissioners

NRC’s Commissioners are not subject to furlough because they are appointed by the President. Therefore, NRC Commissioners are exempted on a basis other than the Antideficiency Act’s exception for imminent threats to the safety of human life or the protection of property.

(k) Policy Direction

Maintain Commission policy direction, including limited staff support for the Commission and the Executive Director for Operations (EDO), to facilitate the orderly shutdown of agency operations and to perform excepted functions.

(l) Legal Advice

Continue to provide legal assistance necessary for the Commission to perform excepted functions.

(m) State Liaison

Maintain liaison with States concerning the Agreement States materials licensing program and the radiological incident emergency planning program to perform excepted functions.

(n) International Liaison

Maintain liaison with the U.S. Government and foreign nations with respect to export/import licensing, international safeguards and intelligence activities, and health, safety, and environmental issues to perform excepted functions.

(o) Public Affairs

Maintain capability to inform the public quickly in the case of emergencies related to nuclear reactors or materials licensees.

(p) Congressional Liaison

Maintain capability to monitor progress of appropriations legislation and to provide support to Congress, as required.

(q) Inspector General

Maintain Office of the Inspector General (OIG) policy direction, the OIG Hotline, limited administrative functions to facilitate the orderly shutdown of operations and to support excepted functions, and legal assistance to support excepted functions. As necessary, provide support for ongoing trials, undercover operations, or other law enforcement and criminal investigative activity relating to the preservation of life or property. The Inspector General (IG) is a Presidential appointee and is exempted from furlough.

(r) Financial Management

Maintain Office of the Chief Financial Officer (OCFO) financial policy direction and limited financial support services to support excepted functions. Examples of this support include travel services, payroll services, and funds certification.

(s) Administrative and Information Technology Support

Maintain limited administrative and information technology support services to facilitate the orderly shutdown of agency operations and to support excepted functions. Examples of this support include limited activities in the areas of building operations, security, mail, contracts, computer network control, records storage and retrieval, and automated data processing hardware and software maintenance.

(t) Human Resources

Maintain limited human resources services to facilitate the orderly shutdown of agency operations and to support excepted functions to include processing of the furlough; providing guidance to employees on pay, leave, insurance, appeal rights, and possible unemployment compensation; serving as management liaison with the National Treasury Employees Union (NTEU); handling employee appeals; and providing employee assistance services.

III. CHECKLIST AND TIMETABLE FOR IMPLEMENTING A SHUTDOWN

Actions are required before, during, and immediately following an exhaustion of all available NRC funds. These actions and the general timeframes in which they are to be performed are described in Exhibits 1 and 2. The timeframes are predicated on the assumption that unobligated carryover funding is available to forestall furloughs for at least 10 working days after a lapse in funds. If unobligated carryover funding supports agency operations for less than 10 working days after a lapse in funds, then the actions described in Exhibits 1 and 2 will be condensed into the available timeframe.

IV. GLOSSARY

Antideficiency Act

Federal law prohibiting Government agencies from obligating the Government, by contract or otherwise, in excess of or in advance of appropriations, unless authorized by a specific statute. The Act provides limited exceptions to incur obligations after funds are exhausted for emergencies involving the safety of human life or the protection of Government property.

Excepted Activities

Agency activities that are authorized to continue after funds have been exhausted.

Exhaustion of Funds

The point at which all available NRC funds have been obligated.

Funds

Amounts available to enter into obligations for specified purposes in a given fiscal year.

Lapse in Appropriation

The date on which the NRC has no new funding authority as a result of a lack of action by Congress.

Senior Leadership Team

NRC office directors and regional administrators.

Shutdown Activities

Those activities necessary to be accomplished to limit operations to excepted functions.

EXHIBITS

Exhibit 1 Checklist for Implementing a Shutdown

Date of a Lapse in NRC Appropriations

At the beginning of a new fiscal year, NRC's appropriations are considered to be lapsed if neither of the following has been enacted:

- 1) New fiscal year appropriation, or
- 2) Continuing resolution.

The following are suggested actions to occur on the date of a lapse in appropriations:

- The Chief Financial Officer (CFO) estimates the amount of unobligated carryover funds remaining and the number of days the agency can possibly operate before funds are exhausted and shutdown will be required.
- The CFO notifies the Chair, the Executive Director for Operations (EDO), and the Inspector General (IG) of the availability of funds on a daily basis.
- The CFO advises and updates the Senior Leadership Team of the ongoing status of funds and any likelihood of an exhaustion of funding.
- The CFO, in coordination with the EDO, communicates to all employees the status of agency funding.
- The Chief Human Capital Officer (CHCO) provides notice to the National Treasury Employees' Union (NTEU) that there has been a lapse in appropriations and presents the possibility of a furlough of bargaining unit employees (BUEs) should there be an exhaustion of funding.
- The EDO communicates the following information to all NRC employees:
 - A lapse in appropriations has occurred,
 - The estimated number of days before funds are exhausted,
 - Which activities will continue,
 - The rights of furloughed employees, and
 - How employees will be notified to return to work.
- The IG communicates the following information to all OIG employees:
 - A lapse in appropriations has occurred,
 - The estimated number of days before funds are exhausted,
 - Which activities will continue,
 - The rights of furloughed employees, and

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- How employees will be notified to return to work.

Exhibit 2 Timetable for Implementing a Shutdown

The following timetable summarizes suggested actions after a lapse in appropriations. The actions and timeframes delineated below are meant to serve as guidelines and create no employee rights or management obligations.

<p>Approximate Number of Work Days Before/ After Funds are Exhausted</p>	<p>Actions</p>
<p>10 days before funds are exhausted</p>	<p>The Chief Financial Officer (CFO), in conjunction with the Executive Director for Operations (EDO) and the Chief Human Capital Officer (CHCO), issues notice to all employees of a possible lapse in funding.</p> <p>The Inspector General (IG) issues notices to all Office of the Inspector General (OIG) employees of a possible lapse in funding.</p> <p>The Office of the Chief Human Capital Officer (OCHCO) notifies the National Treasury Employees' Union (NTEU) that furlough of employees is imminent and begins appropriate discussions.</p> <p>The Office of Administration (ADM), Acquisition Management Division (AMD), generates and distributes a list of active contracts, orders, and agreements for offices to review to determine which contracts, orders, and agreements should receive stop-work orders and which contracts should continue performance.</p> <p>OCHCO prepares and distributes a list of all employees for each agency office and region, providing information such as name, grade, job title, office, division, and branch.</p> <p>The Senior Leadership Team reviews and updates the plan for communicating with furloughed and excepted employees before and during the shutdown, after funds are exhausted.</p>

<p>Approximate Number of Work Days Before/ After Funds are Exhausted</p>	<p>Actions</p>
<p>9 days before funds are exhausted</p>	<p>The EDO provides guidance on travel and training during the period of lapsed appropriations.</p>
<p>7 days before funds are exhausted</p>	<p>The EDO provides guidance for each office and office leadership begins to prepare a list of employees by name, grade, job title, bargaining unit status, division, and branch, and transmits the lists to the EDO, indicating each employee’s furlough/retention status. For those employees being retained, their function during the furlough period will be identified. These lists are to be developed using the criteria established in Section II of this handbook and guidance from the EDO, CFO, and CHCO.</p> <p>Each OIG supervisor prepares a list of employees by name and transmits the list to the IG indicating each employee’s furlough/retention status. For those employees being retained, their function during the furlough period will be identified.</p> <p>AMD receives and organizes information from offices identifying those contracts, orders, and interagency agreements, including Department of Energy (DOE) laboratory agreements, that are (a) excepted, (b) non-excepted but can be allowed to continue without interruption because the acquisition is already sufficiently funded and the work does not require direct monitoring or technical direction by NRC staff during performance, and (c) non-excepted and the work must cease on a specified date.</p> <p>The IG directs OIG staff to identify those contracts and interagency agreements that are excepted, non-excepted but work needs to continue, and non-excepted and work should cease.</p>

<p>Approximate Number of Work Days Before/ After Funds are Exhausted</p>	<p>Actions</p>
<p>5 days before funds are exhausted</p>	<p>AMD—</p> <ul style="list-style-type: none"> • Notifies vendors on commercial contracts of the potential shutdown, providing instructions regarding how to proceed. • Issues stop-work orders to DOE laboratories for agreements that are deemed to be non-excepted and cannot continue after funds have been exhausted. • Issues stop-work orders to servicing agencies for interagency agreements that are deemed to be non-excepted and cannot continue after funds have been exhausted. <p>The IG—</p> <ul style="list-style-type: none"> • Requests that work be stopped on interagency agreements with the NRC OIG that are deemed to be non-excepted and cannot continue after funds have been exhausted. • Directs all acquisition support agencies that have an interagency agreement with the NRC OIG to issue stop-work orders for commercial contracts that are deemed to be non-excepted and cannot continue after funds have been exhausted.
<p>3 days before funds are exhausted</p>	<p>Each office and region provides to the EDO a list of employees to be furloughed/retained.</p>

<p>Approximate Number of Work Days Before/ After Funds are Exhausted</p>	<p>Actions</p>
<p>2 days before funds are exhausted</p>	<p>The EDO obtains the Chair’s approval of each submitted list of employees to be furloughed for all offices except for the OIG and individual Commissioner offices and submits it to the CHCO for review and preparation for processing. OCHCO prepares a list of furloughed bargaining unit employees (BUEs) and a list of retained BUEs.</p> <p>Commissioners approve the lists of employees to be furloughed for their respective staffs and provide these lists to the EDO for processing.</p> <p>The IG approves each submitted list of OIG employees to be furloughed and directs the OIG Director, Resource Management and Operations Support, to review and prepare for processing.</p> <p>OCHCO distributes a shutdown checklist to employees, including standard out-of-office messages for voicemail and e-mail.</p> <p>OCHCO provides employees with an advance copy of information from the furlough notices.</p> <p>Before shutting down, the Senior Leadership Team establishes a plan for resuming normal operations.</p>
<p>1 day before funds are exhausted</p>	<p>The CFO, in coordination with the CHCO, communicates to all employees the exhaustion of all available funds and the probability that employees will have to be furloughed.</p> <p>The IG communicates to all OIG staff the exhaustion of all available funds and the probability that employees will have to be furloughed.</p> <p>OCHCO notifies NTEU Local 208 of the probability that BUEs will have to be furloughed, and that a list of furloughed BUEs will be provided if the furlough must be implemented.</p> <p>The EDO, in consultation with the Chair’s office, approves issuance of external communications to licensees, Government agencies, and other external stakeholders.</p> <p>The EDO, in consultation with the Chair’s office, approves issuance of guidance to resident inspectors on expectations during a period where NRC funds are exhausted and non-expected employees are furloughed.</p>

<p>Approximate Number of Work Days Before/ After Funds are Exhausted</p>	<p>Actions</p>
<p>Date funds are exhausted</p>	<p>The Senior Leadership Team instructs their retained employees to continue identified excepted activities.</p> <p>OIG managers instruct their retained employees to continue identified excepted activities.</p> <p>Upon reporting to work, nonexcepted employees are instructed to perform only those functions associated with the orderly suspension of agency activities, to include the following:</p> <ul style="list-style-type: none"> • Notify outside parties of the agency's status. • Cancel meetings. • Secure all files. • Document the status of individual cases and projects. • Date stamp and secure all mail received but without processing further. • Answer telephones, but only to inform callers of agency status, without responding to new business matters unless of an emergency nature. • Change/set-up out-of-office e-mail and voicemail messages in accordance with the standard language provided by OCHCO. <p>These functions should require no more than one-half day to carry out.</p> <p>The EDO authorizes OCHCO to issue furlough notices to employees not being retained.</p>

<p>Approximate Number of Work Days Before/ After Funds are Exhausted</p>	<p>Actions</p>
<p>Date funds are exhausted (continued)</p>	<p>OCHCO issues notices of furlough to all affected employees. OCHCO provides a list of furloughed and retained bargaining unit employees to NTEU.</p> <p>The IG issues furlough notices to OIG employees not being retained to perform excepted functions in OIG.</p> <p>The Senior Leadership Team requires any employees in a travel status to return to their duty station as soon as practical, unless travel is for the protection of public health and safety or for purposes of shutdown activities.</p> <p>OIG managers require employees in a travel status to return to duty station as soon as practical, unless travel is for the protection of public health and safety or for purposes of shutdown activities.</p> <p>The Office of the General Counsel (OGC) suspends adjudicatory proceedings and litigation as is legally permissible.</p> <p>The Senior Leadership Team instructs employees to monitor the furlough status of the agency on NRC’s external Web site.</p> <p>The Senior Leadership Team dismisses employees that have received furlough notices.</p> <p>OIG managers dismiss employees who have received furlough notices.</p> <p>CFO informs all offices that no obligations can be incurred without the prior approval of the CFO.</p> <p>ADM notifies any remaining vendors with instructions on whether or not to stop work.</p>

<p>Approximate Number of Work Days Before/ After Funds are Exhausted</p>	<p>Actions</p>
<p>1 day after funds are exhausted</p>	<p>The EDO authorizes OCHCO to furlough any additional employees who have completed shutdown activities.</p> <p>The IG furloughs any additional OIG employees who have completed shutdown activities.</p> <p>The EDO and the CFO consult with the Office of Management and Budget (OMB) and the Office of Personnel Management (OPM) regarding shutdown activities.</p> <p>OCHCO reviews employee listings to ensure that all employees have been notified of their status, begins processing of furlough actions, and continues to provide guidance to employees on pay, benefit, and other appropriate issues.</p> <p>The Senior Leadership Team takes any remaining administrative actions that are necessary to ensure protection and security of NRC property and personnel.</p>
<p>2 through 20 days after funds are exhausted</p>	<p>Continue excepted activities, as outlined in the Concept of Operations.</p> <p>As necessary, the Senior Leadership Team, in coordination with OCHCO, reviews staffing of excepted activities to determine whether additional employees should report to perform excepted activities or be furloughed if no longer required to perform excepted activities.</p> <p>ADM issues automated notifications to NRC employees and alerts the Office of the Chief Information Officer (OCIO) for posting on NRC’s external Web site to announce the status of the agency, if necessary.</p>

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<p>Approximate Number of Work Days Before/ After Funds are Exhausted</p>	<p>Actions</p>
<p>21 days after funds are exhausted (29 calendar days)</p>	<p>The EDO, in consultation with OCHCO, authorizes OCHCO to issue second furlough notices.</p> <p>The IG issues second furlough notices for OIG employees.</p> <p>AMD determines if NRC contracts should be terminated, and if so, issues direction accordingly.</p> <p>AMD determines if DOE laboratory agreements and other interagency agreements should be terminated, and if so, issues direction accordingly.</p> <p>The IG directs, as necessary, acquisition support agencies that have an interagency agreement with the NRC OIG to issue termination notices to NRC OIG contractors to whom stop-work orders were previously issued.</p> <p>OCHCO ensures the proper transfer of the related official personnel records, including related payroll records, as appropriate, in accordance with OPM guidance.</p> <p>OCIO ensures the transfer of agency official programmatic records to designated agencies such as the General Services Administration (GSA), OPM, or National Archives and Records Administration (NARA).</p> <p>ADM ensures the inventory and transfer of all personal and real property to the GSA.</p> <p>Continue excepted activities, as outlined in the Concept of Operations.</p>
<p>22 days after funds are exhausted and forward</p>	<p>Continue excepted activities, as outlined in the Concept of Operations.</p>

<p>Approximate Number of Work Days Before/ After Funds are Exhausted</p>	<p>Actions</p>
<p>Date new funding is appropriated</p>	<p>The CFO notifies the Chair, the EDO, and the IG that an appropriation bill has been enacted that funds the NRC.</p> <p>The EDO, in consultation with the Chair’s office, authorizes the reestablishment of all operations/functions that were curtailed after funds were exhausted.</p> <p>As outlined in the Concept of Operations, NRC’s external Web site is updated to reflect that the agency has been authorized to restart and resume operations.</p> <p>Upon receipt of notification or news coverage that the NRC has received new funding, furloughed employees are expected to return to work at the start of their next regular duty day.</p>