



**UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION**

**DIRECTIVES NUMBER: D601**

**SUBJECT: Orderly Shutdown in the Event of a Lapse in Appropriations**

**DIRECTIVE OWNER: Office of Financial Management, Planning and Evaluation**

**EFFECTIVE DATE: August 6, 2019**

**CERTIFIED CURRENT DATE: August 6, 2019**

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1. **PURPOSE.** This directive establishes responsibilities and guidance to perform an orderly shutdown of the CPSC in the event of a lapse in appropriations, the continuation of excepted activities, and the orderly re-opening of the CPSC when the lapse in appropriations ends.
2. **AUTHORITY.**
  - a) U.S. Const., art. I, § 9, cl. 7.
  - b) Antideficiency Act (31 U.S.C. §§ 1341 and 1342).
  - c) OMB Circular A-11, Section 124 (as updated).
  - d) Memorandum Opinion for the Director of the Office of Management and Budget, *Government Operations in the Event of a Lapse in Appropriations* (August 16, 1995).
  - e) *Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations*, 5. Op. O.L.C. 1 (1981), 43 Op. Atty. Gen. 293.
  - f) Memorandum Opinion for the Counsel to the President, *Authority to Employ White House Office Personnel Exempt from the Annual and Sick Leave Act Under 5 U.S.C. §6301(2)(X) and (XI) During an Appropriations Lapse* (April 8, 2011).
  - g) *Copyright Royalty Tribunal—Commissioners' Pay During Funding Gap*, 61 Comp. Gen. 586 (1982), B-208333 (1982).

### 3. DEFINITIONS.

- a) **Lapse in Appropriations:** A lapse in appropriations, also known as a funding gap or hiatus, refers to the period between the expiration of an appropriation and the enactment of a new one, during which time an agency or program experiences a lapse in funding. When there is a lapse in appropriations, the Antideficiency Act (31 U.S.C. § 1341) prohibits government officers and employees from obligating the government, unless specifically authorized by law. In the absence of appropriations, federal agencies must terminate all non-exempt activities.
- b) **Voluntary Services:** The Antideficiency Act (31 U.S.C. § 1342) prohibits the government from accepting voluntary services. Employment of government personnel during an absence of appropriations is considered to be an acceptance of voluntary services, and thus, is prohibited. Only employees engaged in excepted or exempted activities are permitted to work during a lapse in appropriations.
- c) **Exempt Employees:** Some categories of employees are exempt from the prohibition on voluntary services. They are:
  - a. Employees whose salaries are funded by appropriations that have neither lapsed, nor been exhausted, such as salaries funded by multiyear or indefinite appropriations. Currently, CPSC does not have any employees covered by this exemption.
  - b. Employees who are exempt from provisions of the Annual and Sick Leave Act (5 U.S.C. § 6103). At CPSC, only the Chairman and Commissioners are exempt from the Annual and Sick Leave Act, and thereby, are covered by this exemption.
- d) **Excepted Employees:** The following categories of employees are deemed excepted and must report to work during a lapse in appropriations:
  - employees who are necessary to perform activities expressly authorized by law;
  - employees who are necessary to perform activities necessarily implicated by law;
  - employees who are necessary to the discharge of the President's constitutional duties and powers;
  - employees who are necessary to perform activities in response to imminent threats to the safety of human life and the protection of property.
- e) **Non-Exempt:** All employees who are not exempt or excepted are considered “non-exempt.” Non-exempt employees will be furloughed in the event of a lapse in appropriations. Non-exempt employees may later be designated excepted, should a need for their services arise to perform excepted activities.
- f) **Excepted Activities:** Exempt and excepted employees who report to work during a lapse in appropriations should not engage in the ongoing, regular functions of government, but rather, should engage in only those activities the suspension of which would imminently

threaten the safety of human life or the protection of property. Excepted activities are activities that are:

- funded with an appropriation that has not lapsed;
- necessary to perform activities expressly authorized by law;
- necessarily implied by law;
- necessary to the discharge of the President's constitutional duties and powers;
- necessary to address imminent threats to the safety of human life and the protection of property;
- necessary to ensure an orderly shutdown of operations.

- g) **Orderly Shutdown:** All non-exempt employees will engage in shutdown activities in the event of a lapse in appropriations. Activities should generally be completed within 4 hours, and may be done in the office, and/or by telework, unless otherwise specified.
- h) **Orderly Re-Opening:** When the lapse in appropriations ends, the agency initiates an orderly re-opening. Staff are expected to return to duty and the agency will resume normal activities at the start of the next day following the end of the lapse in appropriations.

4. **SCOPE.** The provisions of this directive apply to all employees of the agency, including the Chairman, Commissioners and their staff.

5. **RESPONSIBILITIES.**

- a) **Chairman:** The responsibilities of the Chairman include ensuring an orderly shutdown of agency operations, continuing excepted activities, and overseeing the orderly re-opening of the agency.
- b) **Office of the Executive Director (OEX):** OEX is responsible for implementing the provisions of the agency shutdown procedures when notified of a lapse in appropriations, making necessary adjustments to the lapse plan during a lapse in appropriations, overseeing excepted activities during the lapse, and overseeing the orderly re-opening of the agency when the lapse in appropriations ends.
- c) **Director, Office of Financial Management, Planning and Evaluation (EXFM):** The Director, EXFM is responsible for monitoring the availability of appropriations and notifying the Executive Director of a lapse in appropriations necessitating an orderly shutdown, notifying the Executive Director when the lapse in appropriations ends, and ensuring an orderly reopening can be initiated, and maintaining the agency's policies and procedures for a lapse in appropriations.
- d) **Excepted Employees:** Excepted employees bear responsibility for performing authorized excepted activities when in duty status.

- e) **Non-Exempt Employees:** Non-exempt employees are responsible for performing orderly shutdown activities, acknowledging receipt of furlough notices, remaining on-call during the duration of the shutdown, and reporting to duty when notified that the lapse in appropriations has ended.

  
Ann Marie Buerkle  
Acting Chairman

August 6, 2019  
Date