

USDA-FOOD SAFETY AND INSPECTION SERVICE

Operations Plan for Absence of Appropriations—Major Provisions

In accordance with the provisions of U.S.C. 1341, the Agency will begin implementation of this plan on the morning of the first working day following the lapse of appropriations. All Agency personnel will be advised to report to their assigned duty stations to prepare for the orderly cessation of operations no longer funded or not specifically excepted by the provisions of 31 U.S. C. 1342, as interpreted by OMB Bulletin 80-14 dated August 28, 1982.

OMB Guidelines:

The Office of Management and Budget (OMB) provides agencies with annual instructions on how to prepare for and operate during a funding gap in *Circular No. A-11*. The circular establishes two “policies” regarding the absence of appropriations: (1) a prohibition on incurring obligations unless the obligations are otherwise authorized by law and (2) permission to incur obligations “as necessary for orderly termination of an agency’s functions,” but prohibition of any disbursement (i.e., payment).

Among other things, a shutdown plan is required to include:

- an estimate of the time to complete the shutdown, to the nearest half-day;
- the number of employees expected to be on-board (i.e., filled positions) before implementation of the plan;
- the total number of employees to be “excepted” under the plan (i.e., not subject to furlough), broken out into two categories: (1) employees “engaged in military, law enforcement, or direct provision of health care activities” and (2) employees whose “compensation is financed by a resource other than annual appropriations”; and
- the total number of additional employees who will be retained, in order to protect life and property, who are not “excepted” from furlough because of the two previous criteria, above.

OMB documents and guidance from previous funding gaps and shutdowns may provide insights into current and future practices. OPM has recommended on a website that agencies use OMB guidelines to determine “excepted” positions (i.e., those not subject to furlough) and provided retyped copies of previous OMB bulletins and memoranda for reference. These and other OMB documents also have been reproduced in several legislative branch documents.

USDA Departmental Specific Guidelines for Shut Down

- All employees will be directed to report to their supervisors to receive assignments of duties or other pertinent information for an orderly closedown. For those teleworking, “report” may be done by telephone.
- Contracting officers will notify contractors of their operating status.
- All records, personal property, real property, and facilities will be maintained and protected until appropriate disposition is accomplished.

April 7, 2011

- When it is determined that an employee is no longer needed to perform activities to accomplish the orderly closedown, the employee(s) will be notified and placed on furlough or other personnel action as appropriate.
- As employees are about to be released, the employee should complete the appropriate timesheet documents, and submit them to the applicable approving authority. Timesheet data will be submitted by master timekeepers at the appropriate time and place.
- Recurring implementation status reports will be provided to the Agency Administrator by excepted Deputy Administrators or Assistant Administrators.
- Other instructions and specific guidance will be issued as circumstances require at each occurrence of a potential closedown situation.

Shut down plans should list specific activities that need to be continued under each excepted category. The plan should identify the number of employees needed to continue each activity. Some activities may require an interim shutdown team of a larger number of employees to implement shutdown activities; if so, this should be specified in the plan as well as how many days the extra employees will be needed to complete the function.

FSIS Activities Prior to a Shutdown:

- The Administrator will be responsible for ensuring that communication to the Management Council addresses the full scope of responsibilities under a shutdown scenario as soon as appropriate after notification by the Department.
- The Administrator will ensure that a review of available funding and excepted functions and positions is conducted, based on the current state of the agency.
- The Administrator will ensure that a shutdown action plan in chronological order, is developed to support this plan.
- The Assistant Administrator (AA) for the Office of Public Affairs and Consumer Education and the Chief Human Resources Officer (CHRO) will prepare a Communication Plan for internal and external stakeholders containing information. Employee communication will include questions about rights under grievance procedures, access to benefits, eligibility for workman's compensation and unemployment benefits and other concerns. External communication will include disposition and/or postings to hotlines, social media, web resources, and other tools.
- The CHRO will prepare a comprehensive Human Resources Plan, including guidance on bargaining unit requirements, activities that must be performed to implement a furlough, and systems and processes that must be maintained to support excepted activities
- The Chief Financial Officer (CFO) will coordinate with the Department's CFO on access to financial and feeder systems including WebTA, payroll, FMMI, SmartPay, and IAS to ensure timely support for excepted activities as appropriate.

April 7, 2011

- The CHRO and CFO will, consistent with Departmental guidance, develop agency-specific guidance for time and attendance reporting and payroll processing.

FSIS Activities Under an Orderly Shutdown:

- The Administrator is responsible for ensuring that a process is in place for recurring status reports to the Office of the Secretary during continuing operations.
- The Administrator is responsible for ensuring that the agency's plan is implemented as established or updated to reflect new requirements.
- Consistent with Departmental and agency guidance, the AAs will ensure that:
 - An internal communication process is established to supply recurring reports to the Office of the Administrator during continuing operations;
 - All travelers return to their duty station, unless the return disrupts an audit of foreign food safety systems or other excepted activity;
 - The status of all contractors is determined and contractors are notified of their status;
 - All excepted employees are designated by name, notified of their status and the duration of their excepted service;
 - All non-excepted employees are designated by name and notified of their status;
 - All time and attendance records are complete;
 - All workstations, records and property are secured;
 - All personnel actions are prepared; and
 - Other actions as identified.
- Consistent with Departmental and agency guidance, the CHRO will be responsible for processing all furlough forms, including updates to furlough notices when on-call employees are returned to excepted service. In addition, the CHRO will undertake a review of all outstanding offers with an effective date likely to be impacted by a shutdown and ensure that appropriate actions are taken.
- Consistent with Departmental and agency guidance, the CFO will be responsible for ensuring availability of all financial systems necessary to support excepted activities. The CFO is also responsible for ensuring payroll processing occurs for compensable time prior to the shutdown, including having the requisite financial staff in place to monitor funds availability.
- Consistent with Departmental and agency guidance, the Chief Information Officer will be responsible for ensuring availability of all information technology systems necessary to support excepted activities and/or the orderly shutdown of systems that do not support excepted activity.

FSIS Excepted Activities Under Continuing Operations:

Appropriated Activities

Those direct functions excepted to ensure that the Nation's commercial supply of meat and poultry products is safe as required under the authority of the Federal Meat Inspection Act (FMIA), as amended; the Poultry Products Inspection Act (PPIA), as amended; and the Egg Products Inspection Act (EPIA) as amended. This includes the daily on-site inspection presence, regulatory enforcement and product testing in the laboratories. In addition, in cases where these functions are performed by State employees (under the Federal State Cooperative Act (Talmadge-Aiken)), the activities are considered exempt. These collective activities, funded by appropriation, are excepted as an "essential to ensure continued public health and food safety, including the safe use of food and drugs."

The agency also has an agreement with the Department of Health and Human Services to compensate them for approximately 20 Commissioned Corps Officers. These positions are not subject to furlough as the incumbents are part of the uniformed services.

The Antideficiency Act prohibits voluntary services and employment of personal services exceeding what has been as authorized by law. By law, therefore, all personnel not designated as excepted will be furloughed.

Reimbursable Work for Industry

The agency performs reimbursable work for industry (non-federal partners) as authorized by the Agricultural Marketing Act of 1946; the Federal Meat Inspection Act (FMIA), as amended; the Poultry Products Inspection Act (PPIA), as amended; and the Egg Products Inspection Act (EPIA) as amended. None of these reimbursable activities are funded under an appropriation prior to reimbursement, and, therefore, are not affected. The agency will continue to offer those services to industry and will maintain the appropriate supervisory, administrative and technical support as necessary.

Designation of Excepted Functions for Continuing Operations¹

I. Category III activities are defined as those necessary to protect Life and Health.

The agency defines our Category III functions as those activities essential to the Nation's food safety operations. These functions are essential to public health for the duration of a government shutdown. Additional functions will be excepted to ensure adequate supervisory, administrative and technical support for those engaged in food safety operations for the duration of the shutdown. Finally, there will be functions that are "on-call" to respond to food safety or administrative events, and will be excepted as needed during the shutdown.

Field inspection of meat, poultry and egg products: The following direct field staff functions will be performed to ensure the safety of human life for the duration of a government shutdown:

1. Inspecting before and after slaughter those birds and animals intended for use as food for humans and supervising the further processing of meat and poultry products.
2. Assuring that meat, poultry and egg products are safe and preventing the movement or sale in commerce of any meat or poultry products which are adulterated.

¹ All staffing numbers are subject to change as more information becomes available.

April 7, 2011

3. Reviewing foreign inspection systems that export meat, poultry and egg products to the United States to ensure compliance with applicable Federal laws and regulations.
4. Applying foreign governments' inspection requirements and procedures to products exported from the United States.
5. Conducting emergency operations in connection with the voluntary recall of meat or poultry products contaminated with drug or chemical residues, other adulterants, or microbial contamination.
6. Conducting epidemiological investigations based on reports of food-borne health hazards and disease outbreaks.
7. Monitoring allied industries to prevent uninspected or adulterated meat, poultry and egg products from illegally entering channels of commerce.
8. Providing pathological, microbiological, chemical, and other scientific examination of meat, poultry and egg products for disease, infection, contamination, or other types of adulteration.
9. Conducting a microbiological monitoring and surveillance program.

Central operations and supervision to support excepted activities. A skeletal staff is necessary to provide minimal program guidance, housekeeping functions such as purchasing supplies, equipment repair, mail, GSA vehicles, information technology property, and administrative functions (payroll, personnel, budget, and finance).

1. Agency-wide. The agency must ensure adequate senior level management of and coordination of the agency's public health responsibilities during a shutdown.
2. Agency-wide. Excepted activities include responding to intentional and unintentional food safety events. Six individuals (including three from the Office of Data Integration and Food Protection) will support these activities for the duration of the shutdown, while up to 20 others will be available on-call if such an event occurs, including recall staff, scientists, recall communication specialists, and food defense specialists.
3. Office of Public Health Sciences/Field Laboratories. In addition to those excepted activities identified above, there are a number of supporting activities that must be excepted, for example, equipment maintenance and repair and sample handling. Personnel at the three field laboratories will largely be considered excepted for the duration of the shutdown.
4. Office of Management/Office of the CHRO/Human Resource Operations. Excepted functions include personnel actions to support excepted activities. A small number of personnel will be required for the duration. In addition, a small number of personnel will be on-call if the duration of the shutdown requires additional hiring actions to support excepted activities.
5. Office of Management /Administrative Services Division/ Contracting Operations. Excepted functions include procurement actions necessary to support the excepted activities for the duration of the shutdown. These will be limited to those that actions for which an obligation has already been made (e.g., providing instructions to a vendor to ship inspection supplies to a specific plant) or those "emergencies involving the safety of human life or the protection of property." The Antideficiency Act prohibits federal officials from obligating funds before an appropriations measure has been enacted, so generally no new contracts can be awarded during a shutdown.

April 7, 2011

6. Office of Management /Civil Rights Division. The Civil Rights Division is responsible for advising the Administrator on the status of the Program within the Agency, advising managers of their responsibilities, and informing all employees of their equal opportunity and civil rights under current laws and regulations. Selected positions within CRD will be on call.
7. Office of the CFO/Financial Processing Center. Excepted functions include payroll processing for reimbursable work for non-federal partners, as well as billing and collections for reimbursable services for the duration of the shutdown. The agency estimates approximately 50 employees will be required for the duration of the shutdown to support these excepted activities. This includes 17 positions that are directly charged to the reimbursable program.
8. Office of the CIO. Excepted functions include continued operation of information systems necessary to support excepted activities, including inspection and enforcement systems, maintaining connectivity to the field, maintaining help desk support, among others. While most of the work is performed by contractors (paid for with FY 2010 funds in this case), a small number of personnel will be required for the duration to provide direction and oversight of these key functions.
9. Office of Policy and Program Development. Excepted functions include provision of expertise on regulatory issues. A small number of personnel will be required to be on-call to respond as needed.

On an annual basis, approximately 9,002 staff years (including those whose time is reimbursable) are required for this effort. The agency will support these activities through its permanent full-time workforce and use of intermittent personnel as necessary to provide coverage.

Guidelines for filling excepted functions. Consistent with RIF and Furlough guidelines, seniority and the ability to perform the excepted function will be the primary consideration by managers in filling positions for excepted functions. There are, however, other factors the agency as a whole would be remiss if not considered by all managers. In the process of making determinations for excepted and non-excepted designation of employees, all supervisors should also utilize equitable Equal Opportunity guidelines to ensure that one or more groups of employees are not unintentionally impacted by the selection process. It is necessary that management consider the importance of workplace diversity when making these personnel decisions in order to avoid the appearance of discriminatory practices.

Activities related to the protection of Federal property and records. Inventories of Federal property and records must be taken and arrangements made to transfer their custody to GSA and OPM. OMB Bulletin 80-14 prohibits such transfer custody until thirty days of lapsed funding has transpired.

For succeeding days after a government shutdown, and on a daily basis, supervisors of employees performing excepted activities will assess the continued need for such employees and release them from duty if necessary, effective with the close of business.

II. The agency has identified its Talmadge Aiken program as falling into **Category II**. All employees in the Talmadge Aiken program are State employees who perform field inspection of meat, poultry and processed egg products in Federal plants. The agency has identified these activities as excepted,

April 7, 2011

commensurate with the identical activities performed by Federal employees. This creates an on-going obligation for the agency, which will need to be funded when an appropriation is received. The agency anticipates current availability of approximately 30 days of operation for its Talmadge Aiken activities.

Summary of Activities in the Event of a Government Shutdown							
Day	Agency	Current Staff	Estimated Employment by Category				Total as % of Staff
			I	II(1)	III	Total	
1	FSIS	10,051	0	195	9,002	9,197	90%
2	FSIS	10,051	0	195	8,999	9,194	90%
3-5	FSIS	10,051	It is difficult to predict numbers because of emergent circumstances that may require additional personnel to be excepted.				

(1) Talmadge-Aiken State employees in Federal plants – not included in Staff counts