



**UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION**

DIRECTIVES SYSTEM

**ORDER NO.
0921.1
September 26, 2016**

FINANCIAL MANAGEMENT

**COMMISSION SHUTDOWN PROCEDURES
IN THE EVENT OF A LAPSE IN APPROPRIATIONS**

- 1. PURPOSE.** The purpose of this directive is to provide procedures to be followed in the event of a shutdown of agency operations resulting from lack of continued funding.
- 2. SCOPE.** The provisions of this directive apply to all CPSC staff.
- 3. OFFICE RESPONSIBLE FOR THIS DIRECTIVE.** The Office of Financial Management, Planning and Evaluation is responsible for this directive.
- 4. CANCELLATION.** This Order cancels CPSC Order 0921.1, dated December 15, 2011.
- 5. AUTHORITY.**
 - a.** Antideficiency Act (31 U.S.C. 1341 et seq.).
 - b.** Memorandum of September 17, 2013, from the Director, Office of Management and Budget (OMB), regarding Planning for Agency Operations (M-13-22).
 - c.** Memorandum of August 22, 1995, from the Director, OMB, to Heads of Executive Departments and Agencies, regarding Agency Plans for Operations During Funding Hiatus.
 - d.** Memorandum of August 16, 1995, from the Assistant Attorney General, Office of Legal Counsel, to the Director, OMB, regarding government operations in the event of a lapse in appropriations.
 - e.** Memorandum of November 17, 1981, from the Director, OMB, to Heads of Executive Departments and Agencies regarding continuance of government functions during a temporary lapse in appropriations.

f. Opinion of the U.S. Attorney General, as stated in a letter to the President, dated January 16, 1981, regarding continuance of government functions during a temporary lapse in appropriations.

g. OMB Bulletin 80-14, dated August 28, 1980.

h. Opinion of the U.S. Attorney General, as stated in a letter to the President, dated April 25, 1980.

i. Guidance and Information on Furloughs, from the U.S. Office of Personnel Management (<http://www.opm.gov/furlough/furlough.asp>) (last visited March 8, 2011).

6. DEFINITIONS.

a. Continuing Resolution. Appropriations legislation other than an annual appropriation that continues agency funding for a specific time period, usually less than a year in duration.

b. Excepted Activities. Those activities necessary to the orderly termination of agency activities, to protect against imminent threats to human safety, to protect government property, or to provide necessary support to these activities.

c. Excepted Employees. CPSC staff designated by the Executive Director as necessary to the orderly termination of agency activities, to protect against imminent threats to human safety, to protect government property, or to provide necessary support to these activities.

d. Funding Hiatus. Any lapse in the availability of funds for Commission programs and activities, thereby eliminating the Commission's authority to incur normal obligations. This includes lapses that result from a lack of timeliness in Congressional or Presidential action on appropriations legislation.

7. BACKGROUND.

a. The Antideficiency Act (31 U.S.C. 1341) prohibits government officers and employees from obligating the government for the payment of money before an appropriation is made unless specifically authorized by law. In the absence of such law, Federal agencies must begin procedures for an orderly termination of all activities when funding is not available due to such circumstances as lack of an agency appropriation or continuing resolution, or lack of funding in the treasury to pay legitimate government obligations due to debt ceiling restrictions.

b. The Antideficiency Act (31 U.S.C. 1342) also 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 is thus prohibited. The Antideficiency Act permits the employment of services required for emergencies to ensure the

safety of human life or the protection of government property. Such emergencies do not include ongoing, regular functions of government, the suspension of which would not imminently threaten the safety of human life or the protection of property.

8. GENERAL.

a. This directive provides the basic procedures and clarifies general responsibilities for implementing an orderly shutdown of agency operations and for the continuation of excepted activities by excepted employees.

b. The ultimate responsibility for ensuring an orderly shutdown of agency operations and the continuation of excepted activities resides in the Chairman of the Commission as agency head. As a practical matter, however, the Executive Director is responsible for carrying out the provisions of this directive upon direction by the Chairman.

c. The guidance in this directive is not meant to include all steps necessary to complete a shutdown or to continue excepted activities, as many cannot be anticipated in advance of implementation or will vary depending upon the particular circumstances of the funding situation.

d. The Commission receives official notification of an impending shutdown directly from OMB. Notification received from other sources, such as the news media or other Federal agencies, must be verified with OMB staff before actual steps may be taken to implement this directive. Notification must be received from OMB before procedures outlined in this directive will be implemented.

e. All shutdown procedures will be performed in a manner that will facilitate reactivation of agency activities when funds become available.

9. SHUTDOWN PROCEDURES.

a. The Executive Director, upon being informed by OMB that shutdown procedures must be initiated, shall notify each Assistant Executive Director (AED) and Office Director (OD) as quickly as practicable and request that they report back within 24 hours with a proposed list of emergency assignments that should be continued to protect against imminent threats to human safety and to protect government property, and the excepted employees for each such assignment. The Executive Director shall coordinate all activities associated with this shutdown plan.

b. The Executive Director will promptly order the Director of Human Resources to notify each CPSC employee of the implementation of shutdown procedures by memorandum, email or other available telecommunications or media. Official notification should provide employees with any available information or explanations that may be helpful in clarifying the nature and expected duration of the shutdown action. The Director of Human Resources shall issue furlough notices to each employee not designated an excepted employee. Employees shall

acknowledge receipt of the furlough notices to the extent practicable and as ordered. The Office of Human Resources shall maintain a list of all employees to whom notices have been issued so that the appropriate personnel actions may be effected.

c. Upon notification that shutdown activities shall begin, each AED or OD will be considered excepted employees for at least the time it takes them to furnish the names and justification for other excepted employees to the Executive Director, and to provide assistance, as required, to assure an orderly shutdown.

d. The Executive Director will then determine, based upon the applicable criteria and in consultation with the General Counsel as appropriate, which employees are excepted employees necessary to protect against imminent threats to human safety and to protect government property during the shutdown period. Employees designated as excepted employees will be notified and directed to remain on duty during the shutdown period.

e. During the course of a shutdown, employees designated as excepted employees may be notified by the Executive Director that their functions are completed and that they are no longer excepted employees.

f. All other employees not designated excepted employees will remain on call during a shutdown in the event that an emergency arises that, based upon a determination in accordance with this directive by the Executive Director, requires them to report to duty as an excepted employee.

10. EXCEPTED EMPLOYEES.

a. Excepted employees during a shutdown are only those employees necessary to the orderly termination of agency activities, to protect against imminent threats to human safety, to protect government property, or to provide necessary support for these activities. Excepted employees necessary to protect against imminent threats to human safety are those where the failure to perform their functions would result in an imminent threat to the safety of human life. Examples of such employees are:

(1) Employees necessary to collect and analyze information about defective products to determine whether they create a substantial and immediate threat to the safety of human life;

(2) Employees necessary to work with manufacturers, distributors, and retailers to recall as quickly as practicable products that create an immediate threat to the safety of human life;

(3) Employees necessary to disseminate information to the public about products that create an immediate threat to the safety of human life;

(4) Employees necessary to coordinate and monitor recalls of products that create a substantial and immediate threat to the safety of human life; and

(5) Employees necessary to file an action in a United States district court with respect to products that create a substantial and immediate threat to the safety of human life.

Examples of excepted employees include¹:

- *Executive and Deputy Executive Directors*: Employees to whom most other excepted employees directly report. As the chief operating managers of the agency, these employees will manage the entire shutdown process and overall operations of the agency during shutdown, coordinate the shutdown with OMB, and advise and support the Chairman regarding excepted executive and administrative matters.
- *Hazard Identification & Reduction*: Minimum number of employees necessary to collect and analyze information about defective products to determine whether they create a substantial and immediate threat to human safety.
- *Compliance & Field Operations*: Minimum number of employees necessary to work with manufacturers, distributors, and retailers to coordinate and monitor recalls, as quickly as practicable, of products that create a substantial and immediate threat to human safety.
- *Import Surveillance*: Minimum number of employees necessary to coordinate with U.S. Customs and Border Protection to monitor and conduct activities related to the importation of products that create a substantial and immediate threat to human safety.
- *General Counsel*: Minimum number of employees necessary to ensure excepted employees, the Chairman, and the Executive Director receive timely and accurate legal advice on all aspects of the shutdown and excepted operations.
- *Information Technology*: Minimum number of employees responsible for information technology during shutdown, including network management and security, and technical support of excepted activities.
- *Facilities Services*: Minimum number of employees responsible for facility operations during shutdown, including physical security of government property.
- *Human Resources*: Minimum number of employees necessary to provide HR support services during a shutdown, including the issuance of furlough notices, processing of personnel actions, securing personnel records, and handling benefit actions.

¹Commissioners are not listed here because their work status would be unaffected by any shutdown. See 61 Comp. Gen. 586, 587 (1982)(salaries of presidential appointees exempt from the Annual and Sick Leave Act "attach by virtue of their status as officers, regardless of the availability of funds at a given time"). Note that the Commissioners' staffs are not exempt.

- *Financial Management, Planning and Evaluation*: Minimum number of employees necessary to maintain control of budget and funds, coordinate suspension of services with contractors, and handle procurements necessary to support excepted activities as well as administer contracts excepted from the shutdown.
- *Communications*: Minimum number of employees to issue announcements of emergency recalls and to warn the public of substantial and immediate threats to human safety.

b. The Executive Director may consolidate the roles and responsibilities of employees necessary to conduct excepted activities in order to minimize the total number of excepted employees.

11. OBLIGATION OF FUNDS.

a. During a shutdown, no funds, in excess of an amount available in an appropriation or fund, may be obligated on behalf of the government other than those necessary to accomplish excepted activities, unless authorized by law.

b. Should any obligation of appropriated funds beyond excepted employee salary costs be necessary, each such obligation must be approved in advance by the Executive Director and reported to the Director, Office of Financial Management, Planning and Evaluation before the obligation is incurred.

c. The Director, Office of Financial Management, Planning and Evaluation shall be responsible for obtaining prior clearance from OMB and the Treasury Department for the expenditure of funds.

d. The Director, Office of Financial Management, Planning and Evaluation will maintain proper accounting of all shutdown obligations, and report daily on such obligations to the Executive Director.

e. The Director, Office of Financial Management, Planning and Evaluation will maintain proper records of time worked by excepted employees, and will process payroll documents. Excepted employees will provide a manual log describing the activities conducted and hours worked at the conclusion of each day worked to the Director, Office of Financial Management, Planning and Evaluation. A summary of time worked by excepted employees will be reported daily to the Executive Director to verify excepted employee status.

12. CONDUCT OF BUSINESS.

a. The only work that may be conducted during a shutdown is that needed to accomplish excepted activities.

b. Immediately upon official notification, the Director, Office of the Secretary (GCOS) will promptly take such actions as necessary to cancel all agency meetings previously scheduled for that day for the Commissioners and other CPSC employees. GCOS will also provide the Executive Director with a list of upcoming agency meetings and instructions on how to cancel them if necessary. If AEDs or ODs are aware of upcoming meetings with outside parties that were not placed on the public calendar, GCOS and the Executive Director should be provided with sufficient information so that such meetings can also be cancelled, if necessary.

c. Immediately upon official notification, each AED and OD will furnish the Executive Director with a list of employees in travel status and instructions on how to contact them. The Executive Director will then decide whether it is more economical to the government to recall each traveling employee immediately or on the next day, based on his or her knowledge of the cause of the shutdown and its potential resolution. In no case will an employee remain in travel status beyond the second day of a shutdown action.

d. Immediately upon official notification, the Office of the General Counsel (OGC) will promptly take such actions as necessary to cancel or postpone court actions involving CPSC for the duration of the shutdown. This includes notification of CPSC witnesses. OGC will also provide the Executive Director with a list of scheduled proceedings in court suits involving CPSC and instructions on how to cancel or postpone them, if necessary.

e. Immediately upon official notification, the Division of Procurement Services will inform on-site or other contractors that their services are temporarily suspended, except to the extent necessary to accomplish excepted activities. The Executive Director, in consultation with program managers, will decide which contracts are excepted.

f. Prohibited Activities. Unless they are necessary to the direct support of excepted activities, the following (not to be considered exhaustive) will not be permitted after available funds are exhausted:

- (1) awards of grants, contracts, cooperative agreements, and small purchases, including the use of purchase cards;
- (2) hiring of employees or extending the appointment of employees whose appointments have expired, if doing so would result in unauthorized obligation of funds during a lapse of appropriations;
- (3) travel of persons and transportation of things, including the use of travel cards and use of GSA vehicles, unless otherwise authorized;
- (4) attendance at meetings, conferences, and seminars;
- (5) new or confirmed employment of experts and consultants, if such actions will incur a financial obligation;

- (6) participation in training classes and other training activities;
- (7) use of equipment and utilities not related to excepted activities where their use creates liabilities for the Government beyond those existing on the date of the funding lapse; and
- (8) authorization of overtime.

g. The Executive Director or an employee's supervisor will notify each employee when OMB has informed the Commission that funds are again available and that employees should return to duty.

_____/s/_____
Elliot F. Kaye
Chairman

9-26-16
Date

Appendix - CPSC Supplemental Information Responsive To OMB Circular No. A-11 (2016), Section 124

Appendix

CPSC SUPPLEMENTAL INFORMATION RESPONSIVE TO OMB CIRCULAR NO. A-11 (2013), SECTION 124

(current as of **September 26, 2016**)

- The estimated time (to the nearest half-day) to complete the shutdown is **a half-day**.
- The number of employees expected to be on-board before implementation of this plan is **550**.
- The total number of employees, not otherwise exempt, to be retained under the plan to protect against imminent threats to human safety, to protect government property, or to provide necessary support to these activities is **22**.