



National Transportation Safety Board

Operations Bulletin AD-GEN-001 **Contingency Plan for Lapse in Appropriation**

1. Issuing Organization. Operations Bulletin was developed by the Office of Administration (AD) and was issued April 8, 2011. It is due for review by April 8, 2013.
2. Purpose. Operations Bulletin AD-GEN-001 provides guidance for suspension of National Transportation Safety Board (NTSB) operations in the event that, due to a lapse of appropriations, there is a government shutdown and an emergency furlough becomes necessary.
3. Policy. It is NTSB policy that, during a lapse of appropriations, all required planning and implementation will proceed in accordance with this bulletin and applicable Office of Management and Budget (OMB) and Department of Justice (DOJ) guidance. This plan covers NTSB employees (located in Headquarters, Regional Offices, and approved telework locations), contractors, volunteers, and persons detailed to and from the NTSB.
4. Cancellation. Operations Bulletin AD-GEN-001 does not cancel any order or previous bulletin.
5. References/Links.
 - A. OPM Guidance and Information on Furloughs, located at <http://www.opm.gov/furlough/>
 - B. OMB Memorandum M -11-13, Planning for Agency Operations During a Lapse in Government Funding, (April 7, 2011), located at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-13.pdf>
 - C. Appendix A-1 OMB Bulletin M-95-18 transmitting 8/16/95 Department of Justice opinion, (August 22, 1995).
 - D. Appendix A-2 OMB Memorandum, *Agency Operations in the Absence of Appropriations*, (October 5, 1990).
 - E. Appendix A-3 OMB Bulletin No. 80-14, Supplement No. 1, *Agency Operations in the Absence of Appropriations*, (August 20, 1982).
 - F. Appendix A-4 OMB Memorandum, *Agency Operations in the Absence of Appropriations*, (November 17, 1981).

- G. Appendix A-5 OMB Bulletin 80-14, *Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations*, (August 28, 1980).
- H. Operations Bulletin CFO-GEN-013, *Emergency Fund*.
- I. Operations Bulletin CFO-GEN-008, *The Administrative Control of Funds Policy*.
- J. *Shutdown of the Federal Government: Causes, Processes, and Effects*. Congressional Research Service Report for Congress, Clinton R. Brass, February 18, 2011.
- K. Anti-Deficiency Act (ADA):
- (1) Prohibitions on Expenditures: The ADA prohibits all officers and employees of the Federal government from entering into obligations in advance of appropriations and prohibits employing Federal personnel except in emergencies, unless otherwise authorized by law. See [31 U.S.C. § 1341 et. seq.](#)
 - (2) Prohibitions on accepting volunteer services: The ADA states in part:
An officer or employee of the United States Government or of the District of Columbia Government may not accept voluntary services for either Government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. As used in this section, the term “emergencies involving the safety of human life or the protection of property” does 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.
See [31 U.S.C. §1342](#).
 - (3) Prohibitions on obligations in excess of apportionment/reapportionment: The ADA prohibits making obligations or expenditures in excess of apportionment or reapportionment, or in excess of the amount permitted by agency regulations. See [31 U.S.C. § 1517\(a\)](#).
 - (a) Administrative: An officer or employee who violates 31 U.S.C. §1341(a), 31 U.S.C. § 1342; 31 U.S.C. § 1517(a) “shall be subject to appropriate administrative discipline, including, when circumstances warrant, suspension from duty without pay or removal from office.” See [31 U.S.C. §§ 1349\(a\), 1518](#).
 - (b) Penal: An officer or employee who “knowingly and willfully” violates any of the three provisions cited above “shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both.” See [31 U.S.C. §§ 1350, 1519](#).
- L. NTSB Civil Law Opinion (See GC-1) “The permissible scope of government operations during a lapse in appropriations under which NTSB employees may be justified as emergency essential personnel and required to perform duties” (February 23, 2011).

6. Responsibilities.

- A. The Chairman is responsible for the following:
- (1) Ensuring that the agency develops and implements a plan that allows it to operate in a manner that conforms to OMB and DOJ guidance during a lapse in appropriations.

- (2) Ensuring that the agency notifies OMB of the NTSB's operational status and informs OMB when the number of employees excepted from furlough exceeds the percentages specified in OMB guidance.
- B. The Managing Director (MD) is responsible for the following:
Approving the agency contingency plan for a shutdown, including
- (1) Directing the institution of the emergency furlough of agency personnel, identifying personnel designated as being excepted from the furlough, identifying "shutdown" activities and actions necessary to suspend agency operations in accordance with OMB and DOJ guidance, specifying permissible activities for excepted employees during the shutdown, and planning for the restart of agency operations in an orderly manner when funds become available.
 - (2) Communicating to Office Directors (OD) and all employees the specifics of the shutdown plan and related activities.
 - (3) Approving, in consultation with the Chairman, employees who will be excepted from the furlough.
 - (4) Submitting to Director, AD (AD-1), the approved list of employees to be excepted from the furlough and, as required, providing any updated list of employees to be recalled from furlough to support emergency and essential operations of the agency.
 - (5) Directing Human Resources Division (HR) to issue furlough decision notices as appropriate.
 - (6) Communicating to all employees when they may return to duty once appropriations have been approved.
- C. The Chief Financial Officer (CFO) is responsible for the following:
- (1) Establishing contact with OMB for guidance and other shutdown activities.
 - (2) Completing and submitting information to OMB.
 - (3) Notifying OMB of the agency's official shutdown.
 - (4) Advising the Chairman, the Managing Director, the General Counsel (GC); the Director, Office of Administration (AD); and the Chief Information Officer (CIO) on the operating status of the NTSB.
- D. GC is responsible for the following:
- (1) Reviewing agency plans for conformance to DOJ decisions and OPM guidance.
 - (2) Establishing contact with DOJ and OMB to obtain any necessary guidance and decisions.
 - (3) Advising management officials of any legal implications with respect to suspending agency operations and activities during a period of lapsed appropriations.
 - (4) Providing legal opinions as required.
- E. AD is responsible for the following:
- (1) Updating this bulletin according to the schedule, or earlier if needed.
 - (2) Ensuring compliance with the procedures set forth in this bulletin.
 - (3) Notifying the General Services Administration (GSA) as necessary concerning shutdown of GSA-leased space.
 - (4) Compiling the list of furloughed and excepted employees and ensuring that NTSB property is protected.

- (5) Establishing contact with other government agencies (e.g., OPM) to obtain guidance as necessary.
- (6) Issuing furlough decision notices as directed by the MD.

F. Office of the CIO is responsible for the following:

- (1) Providing the means to support communication for NTSB staff operating under the provision of this bulletin. Specifically, this responsibility entails ensuring the continued availability and operation of the NTSB network and including specific applications such as e-mail and wireless communication. Office of the CIO will also carry out measures necessary to ensure the security of these resources.
- (2) Providing the means for external stakeholders and the public to communicate with the NTSB. Specifically, this means providing continuous 24/7 operation of the Communications Center and providing information technology infrastructure for the NTSB's public website.

G. ODs are responsible for the following:

- (1) Initiating steps to verify contact information for all employees and ensuring that HR has the updated contact information.
- (2) Proposing to the MD for approval the names of employees within their organizations (a) to be excepted from the furlough and/or (b) who are considered necessary for the orderly shutdown of activities.
- (3) Submitting the MD's approved list of excepted employees by name and job title to HR, including any employees who are recalled from the furlough.
- (4) Maintaining communications with the MD and with their employees.
- (5) Confirming that all their employees have received e-mail notification of the furlough decision notice and have acknowledged receipt of this decision.

H. Employees are responsible for the following:

- (1) Abiding by the provisions of this bulletin.
- (2) Ensuring that their supervisor has their updated contact information.
- (3) Acknowledging receipt of, and returning to HR, their furlough decision notice.

7. Procedures.

A. Planning for the suspension of nonemergency essential government operations when appropriations have lapsed:

- (1) The CFO will provide information pertaining to continuing resolutions, as necessary, to ensure the orderly execution of program funds.
- (2) During a continuing resolution, funds may **not** be used to
 - (a) Exceed any limitations or provisions specified in the terms of the continuing resolution.
 - (b) Exceed any obligation control levels established.
 - (c) Enter into new obligations.

B. If a lapse in appropriations occurs, the following actions will be taken:

- (1) Operating Under a No-Funds Situation. If funds have expired, and the funding lapse is anticipated to be temporary, the NTSB can perform only emergency essential

activities or activities necessary for the orderly shutdown of routine, nonemergency operations.

- (2) Emergency essential activities to be continued during a no-funds emergency situation include those NTSB functions necessary to provide safety of human life or the protection of property. There must be a reasonable likelihood that the safety of human life or the protection of property (or both) would be compromised in some significant degree by the delay in the performance of the agency function. The Chairman and the MD will confer and approve the list of employees excepted from the furlough. In close consultation with the GC and the CFO, the Chairman and the MD may authorize, as emergency essential activity, very specific investigative work, such as the following:
 - (a) launches to major accidents involving significant casualties.
 - (b) certain other accidents when failure to proceed with the investigation creates a significant risk to transportation safety.
 - (c) ongoing investigation activities and report production that are absolutely necessary to prevent the imminent potential for loss of life and significant property damage if the NTSB fails to act. Emergency essential activities must be performed at the minimum level possible with a minimum number of staff.
- (3) Supervisors should identify employees and positions that are necessary to perform the functions associated with the orderly shutdown activity. These employees will continue to work only for the length of time necessary (no more than 4 hours) to complete shutdown activities. Non-excepted employees who are scheduled to telework on their next scheduled work day may perform these shutdown activities from their telework location, if an existing telework agreement is in place. In addition, with supervisory approval, other employees may be allowed to conduct shutdown activities from a remote location, even without an existing telework agreement, if the nature of the employees' shutdown activities (e.g., receiving and acknowledging receipt of an electronic furlough notice and adjusting voicemail and email to reflect current work status) are de minimis (i.e., can be completed in approximately 15 minutes). All other non-excepted employees will be expected to report to work on their next scheduled work day to carry out orderly shutdown activities.
- (4) All shutdown activities also include any activities to facilitate efficient reactivation of operations when funds are again available. Examples of shutdown activities include the following:
 - (a) Canceling meetings, hearings, and other previously arranged business and notifying parties such as other Federal agencies, state governments, and private entities involved in NTSB matters of the cessation of normal business.
 - (b) Documenting the status of cases and projects so they can be resumed, transferred, or otherwise appropriately handled when the funding situation is determined.
 - (c) Planning, controlling, and maintaining orderliness only through the actual phasedown of operations.
 - (d) Perform only necessary fiscal and accounting tasks required to maintain accountability and reporting obligations and expenditures of all funds.

- (e) Perform only those tasks necessary to protect classified information, including listing all papers to be accorded classified status and securing all appropriate files and automatic data processing information.
 - (f) Perform only those requisite administrative functions, required to process the payroll for the pay period through the expiration of the previous continuing resolution.
 - (g) Conduct other necessary functions that contribute directly to the orderly cessation of nonemergency/essential NTSB activities, protect life, and/or safeguard Government property and records.
- (5) Employees excepted from an emergency furlough:
- (a) Only personnel designated as being excepted from any emergency furlough should report to work during agency shutdowns. The following are categories of personnel that are excepted from the furlough:
 - i. Individuals appointed by the President, with or without Senate confirmation (only NTSB Board Members; **not** Schedule C employees).
 - ii. Employees designated to perform emergency essential duties as determined by the Chairman and the MD in accordance with DOJ and OMB guidance listed in Section 5 of this Bulletin. See paragraph 7(B)(2). In addition, employees who are approved to be recalled to duty will be considered excepted employees.
 - iii. Employees designated to perform assignments for a short time (no more than 4 hours) related to the orderly shutdown of agency operations (for example, to issue furlough notices to employees, secure equipment or evidence).
 - (b) ODs must submit a recommendation list of employees proposed to be excepted from the furlough by name and job title to the MD for approval. The MD will forward a final approved list to AD-1 if a no-funds situation appears likely.

C. Instructions for shutdown.

- (1) The MD notifies agency personnel when appropriations have lapsed and the NTSB contingency plan is activated.
- (2) All NTSB activities not approved as emergency essential or as shutdown activities must cease when funds available for obligation are exhausted (i.e., no funds). However, no actions under this contingency plan are to be initiated without notification from the Chairman and/or MD that the plan is to be put into effect. The NTSB may incur obligations for emergency essential and shutdown activities once available funds have been exhausted; however, only obligations are incurred, and no funds are actually disbursed for these obligations without the enactment of an appropriations act or continuing resolution.
- (3) Employees excepted from the furlough will perform duties that are required because the failure to perform those functions would result in an imminent threat to the safety of human life or the protection of property or are necessary for an orderly shutdown of agency function.
- (4) ODs must submit a recommended list of employees to be excepted from the furlough by name and job title to MD for his approval, including lists that are updated later with the names and job titles of any employees who are recalled from the furlough. The MD will send the approved lists to the OD and HR.

- (5) If a funding lapse occurs, the MD will authorize HR to transmit a “Furlough Decision Notice Due to Lapse of Appropriations” (5 *Code of Federal Regulations*, Part 752).
- (6) Notices.
 - (a) HR must prepare specific furlough notices to the employees. A notice must be distributed to each employee not designated as excepted personnel.
 - (b) Employees must acknowledge receipt of the notice in writing. Supervisors will activate their office phone tree system to confirm receipt of the furlough decision notice by employees.
 - (c) This notice should be issued prior to furlough, but when this is not feasible, any reasonable notice (telecommunication, written, or oral) is permissible. If prior written notice is not provided, the NTSB must provide the employee with a written decision notice at the earliest possible time following the furlough. NTSB employees on detail may be furloughed depending on the terms of the detail agreement and which organization is paying the cost of the detail.
- (7) Employees from other organizations who are detailed to the NTSB must return to their duty station in the event of an NTSB shutdown.
- (8) Temporary employees will be furloughed in the same manner as permanent employees.
- (9) Travel.
 - (a) Supervisors must contact any employee on travel status and advise him or her to return to the duty station immediately in accordance with the Federal Travel Regulation, unless the employee volunteers to be furloughed at the travel site, without pay or per diem and the NTSB agrees that such arrangement is in the best interest of the Federal Government. Therefore, it is necessary that supervisors know the location of their employees prior to a shutdown period. Only under extenuating circumstances will retention of an employee in a travel status be considered to be in the best interest of the Government.
 - (b) In consultation with GC, CFO, and the OD, the MD will consider the likely duration of the funding lapse and the cost of returning the employee to the duty station and then resuming the travel later, if necessary, as opposed to retaining the employee in a volunteer travel status without pay or per diem until further funding is appropriated.
 - (c) Employees must use their government travel card if they are performing emergency essential activities for the NTSB and will be personally responsible for paying for the expenses they incur since funds will not be available to reimburse them during the shutdown period. Once funding becomes available, they may submit a request for reimbursement of their travel expenses. For guidance on travel cards, see Operation Bulletin CFO-TVL-003, *Individually-Billed Travel Cards*, Section E and Attachment 2.
 - (d) Employees on travel status who are excepted employees may be retained on pay status if the travel they are performing meets the requirements of emergency essential activities.
- (10) Supervisors will inform employees (in writing or by telecommunication) that they may perform only those activities identified as emergency essential or necessary to operational shutdown activities. Supervisors must also inform employees who will be furloughed that they may be recalled to duty to perform emergency essential

activities. Supervisors must also inform employees involved in the orderly shutdown activities that they may be furloughed when these duties are completed.

D. Prohibited Activities.

Unless they are necessary to the direct support of authorized emergency essential activities, activities listed below are not permitted after available funds are exhausted. Prohibited activities include, but are not limited to, the following:

- (a) Awarding of contracts, cooperative agreements, and small purchases.
- (b) Hiring of personnel or extending the appointment of personnel whose appointments have expired, if doing so would result in unauthorized obligation of funds during a lapse of appropriations.
- (c) Traveling unless specifically exempted by the Chairman and/or MD (refer to paragraph 7 (B)(4)(iii)).
- (d) Attending meetings, conferences, and seminars.
- (e) Employing new or continuing employment of experts and consultants, if such actions will incur a financial obligation from funds for which there is no appropriation.
- (f) Participating in training classes and other training activities.
- (g) Using of equipment and utilities not related to authorized activities where their use creates liabilities for the Government beyond those existing on the date of the funding lapse.
- (h) Transporting or shipping articles (for example, packages)
- (i) Authorizing overtime or compensatory time.

8. External Reporting Requirements.

A. Report personnel in accordance with OMB contingency plan requirements.

9. Definitions.

A. **Continuing resolution:** A continuing resolution is a type of [appropriations legislation](#) used by the [United States Congress](#) to fund government agencies if a formal appropriations bill has not been signed into law by the end of the congressional [fiscal year](#). The legislation provides funding for existing Federal programs at current or reduced levels.

B. **Excepted Employee/Personnel:** The term *excepted employee* refers to employees who are excepted from a furlough by law because they are (1) performing emergency work involving the safety of human life or the protection of property, (2) involved in the orderly suspension of agency operations, or (3) performing other functions exempted from the furlough. See paragraph 7(B)(4) "Procedures". (Note: An *excepted employee* is not to be confused with *an employee in the excepted service*.).

C. **Emergency Essential Activities:** These are activities that protect life and property in which there is some reasonable likelihood that either or both would be compromised in some significant degree by the delay in the performance of an agency function. The Anti-Deficiency Act further provides that "emergencies involving the safety of human life or the protection of property" does 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. In close consultation with the MD, GC, and CFO, the Chairman may authorize, as emergency essential activity, very specific investigative work, such as

- (1) launches to major accidents involving significant casualties.
- (2) certain other accidents when failure to proceed with the investigation creates a significant risk to transportation safety.
- (3) ongoing investigation activities and report production that are absolutely necessary to prevent the imminent potential for loss of life and significant property damage if the NTSB delays or fails to act. Emergency essential activities must be performed at the minimum level possible with a minimum number of staff.

D. **Furlough:** A furlough is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds or for other non-disciplinary reasons. A furlough employee may not be placed in leave status.

E. **Shutdown:** A shutdown is a type of furlough in which the agency no longer has the necessary funds to operate and, therefore, must shut down those activities that are not excepted by the OMB.

10. Attachments.

A. Sample Furlough Decision Notice Due to Lapse of Appropriations (5 CFR Part 752)

ATTACHMENT

SAMPLE FURLOUGH DECISION NOTICE DUE TO LAPSE OF APPROPRIATIONS
(5 CFR PART 752)

(This would be used for a “shutdown” furlough, where the agency no longer has the necessary funds to operate and must curtail those activities not excepted by Office of Management and Budget (OMB) standards. In such instances there is no advance written notice proposing the action. See 5 CFR 752.404(d) and 359.806(a)).

In the absence of either an FY 20xx appropriation, or a continuing resolution for the National Transportation Safety Board (NTSB), no further financial obligations may be incurred by the NTSB, except for those related to the orderly suspension of NTSB operations or performance of excepted activities as defined in the OMB memorandum for Heads of Executive Departments and Agencies, dated November 17, 1981. Because your services are no longer needed for orderly suspension of operations and you are not engaged in one of the excepted functions, you are being placed in a furlough status effective (enter date). This furlough, e.g., nonpay, nonwork status, is not expected to exceed 30 days. Therefore, this furlough expires on (enter date). You should listen to public broadcasts and when you hear that a continuing resolution or a FY 20xx appropriation for the NTSB has been approved, you will be expected to return to work on your next regular duty day.

This action is being taken because of a sudden emergency requiring curtailment of the agency's activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 *Code of Federal Regulations* (CFR) 752.404 (d)(2) and under 5 CFR 359.806(a) for Senior Executive Service (SES) career appointees.

If employees are being retained in your competitive level, they are required for orderly suspension of agency operations or they are performing one of the excepted activities defined in the OMB memorandum.

During the furlough period, you will be in a nonpay, nonduty status. You will not be permitted to serve as an unpaid volunteer, but must remain away from your workplace unless and until recalled. Any paid leave (for example, annual, sick, court) approved for use during the furlough period is cancelled.

Employees who have completed a probationary or trial period or one year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection Board (MSPB). Employees in the excepted service who have veterans preference may appeal to the MSPB if they have completed one year of current continuous service in the same or similar positions as the one they now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to the MSPB if they have completed two years of current continuous service in the same or similar positions in an Executive agency under other than a temporary

