



U.S.COMMODITY FUTURES TRADING COMMISSION

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Office of the  
Executive Director

MEMORANDUM

TO: Office of Management and Budget

FROM: Anthony C. Thompson  
Executive Director

DATE: September 24, 2015

SUBJECT: CFTC Shutdown Plan

Pursuant to Section 124, Agency Operations in the Absence of Appropriations, OMB Circular A-11 (2015), the Commodity Futures Trading Commission (CFTC) is submitting its plan for an orderly shutdown in the event of a lapse of appropriations.

In the event that a lapse of appropriations occurs, the CFTC will severely curtail its operations until additional appropriations are enacted into law, and expects that the vast majority of the agency's operations will cease. However, consistent with the exception set forth in the Antideficiency Act, 31 U.S.C. § 1342, the CFTC has identified certain employees needed to perform excepted or emergency functions that protect life or property during a lapse in appropriations. That determination is based, in part, on the opinion promulgated by the Department of Justice, Office of Legal Counsel (OLC) that:

In the absence of government supervision, the stock markets, commodities and futures exchanges would be unable to operate . . . these actions and the others required as part of a true shut down of the federal government would impose significant health and safety risks on millions of Americans, some of which would undoubtedly result in the loss of human life, and they would immediately result in massive dislocations of and losses to the private economy, as well as disruptions of many aspects of society and of private activity generally, producing incalculable amounts of suffering and loss.

OLC Memorandum for the Director of the Office of Management and Budget, *Government Operations in the Event of a Lapse in Appropriations*, OLC Opinion, at 2-3 (Aug. 16, 1995).

Consistent with this, we have identified employees who are necessary to address an imminent risk to the safety of human life or the protection of property:

- Assuming the plan is implemented on October 1, 2015, the CFTC has approximately 720 employees on board. There are an additional 11 employees in the Whistleblower and Consumer Protection Offices which are funded by resources other than annual appropriations.
- Of the 720 employees, 35 have been identified as excepted from the restrictions of the Antideficiency Act, because their work is necessary to address an imminent risk to the safety of human life or the protection of property. This represents 3.9% of the CFTC's staff. The justification for each employee's inclusion on the excepted list is set forth in the attached table.
- The 11 employees in the Whistleblower and Consumer Protection Offices are exempt from furlough because their operations are funded through a separate funding source unrelated to the CFTC's annual appropriation.
- The Commissioners are PAS appointees (Presidential appointees with Senate confirmation) and are exempt from furlough. Their respective staffs, however, are subject to furlough under the requirements of the Antideficiency Act.
- With limited exceptions, all employees who are not identified as excepted would require no more than four hours to conduct an orderly shutdown of agency operations.
- Of the 720 the CFTC employees noted, there are no employees that are excepted because they are engaged in military, law enforcement, or direct provision of health care activities or because their compensation is financed by a resource other than annual appropriations.

The limited contingent of excepted employees has been identified to ensure, to the extent practicable, that a bare minimum level of oversight and surveillance of the futures markets, clearing operations, and intermediaries is maintained. However, the vast bulk of the CFTC's oversight and surveillance functions will cease during a lapse of appropriations. In the event that circumstances change such that an imminent risk to the safety of human life or the protection of property emerges, the excepted employees will be responsible for notifying appropriate agency officials, who then will make a determination as to whether additional employees must be recalled from furlough to address the imminent risk.

For your information, we are attaching three documents as appendices to this response:

1. A copy of the CFTC's Lapse Procedure, dated July 2015.
  2. A chart containing a list of the 35 employees who have been determined to be excepted for purposes of the Antideficiency Act.
  3. A one-page summary of which CFTC functions will continue in the event of a lapse of appropriations, and which functions will cease during such a lapse.
- Please feel free to contact me at 202-418-5697 if you have any questions.

## **CFTC Procedure**

**Date:** July 2015

**Description:** **Lapse in Appropriations** – This procedure describes the agency's plan for operating in the event of an emergency shutdown due to a lapse in appropriations

**Contact:** Karen Leydon  
Mary Jean Buhler

### **Purpose**

This procedure outlines the process the Commodity Futures Trading Commission (CFTC) will follow to shut down operations in the event of a lapse in appropriations and until additional appropriations are enacted into law. Under the Antideficiency Act (31 U.S.C. §1341 *et seq.*), officers and employees of the federal government cannot, among other things, enter into obligations in advance of appropriations or employ federal personnel except in emergencies involving the safety of human life or protection of property, or to accomplish the orderly suspension of agency operations. If no funds are available, the agency must:

- Initiate the orderly shutdown of agency activities not considered essential to the safety of human life or protection of property; and
- Continue only those emergency functions, which if suspended, would imminently threaten the safety of human life or protection of property, as defined in this procedure.

### **Excepted Employees**

- When shutdown appears imminent, the Human Resources Branch (HR), in consultation with the Office of General Counsel (OGC) and the agency offices and divisions, will recommend to the Chairman which employees should be excepted from furlough because they are needed to perform approved emergency functions that protect life or property.
- Once the Chairman approves the list of excepted employees, HR will notify excepted employees of their obligation to report to work in the event of shutdown. The agency offices and divisions will notify the excepted employees of the emergency functions they are to perform.
- As the shutdown continues, the Division/Office Directors will continually evaluate the list of excepted employees to determine whether adjustments need to be made in order to ensure that emergency functions can be performed.
- If circumstances shift, Division/Office Directors may request that adjustments be made to the excepted list, which may result in the recall of certain employees. Any such request must be made to the Executive Director, who will consult with the General Counsel and Office of the Chairman prior to approval.

## **Employees Exempt from Furlough During a Lapse in Appropriations**

- HR will notify Presidential appointees that they will continue to work but their staff members will be subject to furlough unless they are needed to perform emergency functions.
- HR will notify employees of the Whistleblower Office and the Office of Consumer Outreach that they will continue to work.

## **Employees Subject to Furlough During a Lapse in Appropriations**

- HR will provide supervisors with furlough notices to be sent to all employees (including student volunteers, unpaid consultants, and individuals on Intergovernmental Personnel Act agreements (as applicable)) other than those described above as not being subject to furlough during a lapse in appropriations.
- Within the first three (3) hours after employees report to work at his/her regularly scheduled tour of duty start time on the first business day following the lapse in appropriations, supervisors will send a furlough notice to all employees under their supervision other than those described above as not being subject to furlough during a lapse in appropriations.
- Employees (except those already on preapproved leave or an alternative work schedule) must report to work on the first business day following the initiation of a shutdown. Within the first three (3) hours after employees report to work at his/her regularly scheduled tour of duty start time, employees will receive a furlough notice and must perform the duties necessary for the orderly shutdown of Commission operations.
- Supervisors must notify employees that travel is cancelled unless it is part of an emergency function that protects life or property. Any employee on travel that is not part of an emergency function protecting life or property must immediately return to his/her duty station
- Employees MAY NOT volunteer to work for the CFTC without pay. This is a violation of Antideficiency Act and carries strong personal sanctions against the individual. Pursuant to 31 U.S.C. §1350 any officer or employee who “knowingly and willfully violates the Antideficiency Act shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both.”
- In the event of a shutdown, all paid leave must be cancelled. Accordingly, any employee who has received preapproval for paid leave during the shutdown period will be furloughed, unless such employee is considered “excepted” as outlined above. Any employee who is informed that they are excepted must report to work.

## **Contractors**

- The Financial Management Branch (FM) will issue “stop work” notices to CFTC contractors for contracts that are not necessary to address an imminent risk to the safety of human life or the protection of property, unless the contract: (1) is already funded; (2) will not impose any new obligations on the government during the lapse in appropriations; and (3) will not require oversight by CFTC personnel during the lapse in appropriations.

- To promote compliance with the Antideficiency Act, FM may issue “termination” notices to CFTC contractors if the lapse in appropriations lasts for thirty days or longer.

### **Notification to OMB**

The Executive Director is responsible for notifying OMB of the shutdown in compliance with Section 124 of OMB Circular A-11.

### **Shutdown Activities for Employees Subject to Furlough During a Lapse in Appropriations**

- Employees who are not excepted must not check email or use voice capabilities or conduct any work. Employees who are not excepted will be instructed to power off and securely store all CFTC provided equipment prior to the lapse in appropriations, and will be informed that they cannot access any such devices while on furlough. This includes, but is not limited to, CFTC provided laptops, smartphones, or tablets.
- Employees who are not excepted must set an autoreply for his/her email address and for public email addresses. Employees who are not excepted must record out-of-office messages on all public phones and on his/her phone.
- All employees who are not excepted must cancel meetings, hearings, and other previously arranged business and notify appropriate parties of the cessation of normal agency business due to a lapse in appropriations.
- Employees who are not excepted should document the status of cases and projects so they can be resumed, transferred, or otherwise appropriately handled when the funding situation is resolved.
- Employees who are not excepted must take appropriate steps to safeguard and secure all records and property to ensure protection of any classified or sensitive information.
- Employees who are not excepted must complete shutdown activities within three (3) hours after the employee reports to work at his/her regularly scheduled tour of duty start time on the first business day following the lapse in appropriations.

### **Notification to Public and Staff**

- The Office of Public Affairs will notify the public of closure and reopening of CFTC offices through the CFTC Website. The website will remain operational because it has already been fully funded prior to the lapse in appropriations. However, the website will not be updated or maintained during a lapse in appropriations, unless necessary to address an imminent risk to the safety of human life or the protection of property.
- The Logistics and Operations Branch will ensure that the main CFTC information line (1-866-406-8550) and the headquarters and regional main phone lines contain current status information.
- Employees are responsible for checking the CFTC information line for information about the reopening of the agency after Congress appropriates funds.

- Employees are expected to return to work on their next regularly scheduled work day, unless on preapproved leave, following enactment of appropriations legislation.

### CFTC Excepted Staff List

Office	Position	Location	Justification
COMM	Chief of Staff	DC	As Chief Operating Officer of the CFTC, this employee will be required to execute tasks that are necessary and incidental to the duties of CFTC employees whose responsibilities address an imminent risk to the safety of human life or the protection of property. Such issues relate to oversight of excepted functions, including advising and supporting the Chairman and Commissioners, as well as other excepted employees, on matters arising during lapse of appropriations.
COMM	Commissioner Staff	DC	Advise Commissioner on matters that the Commission may need to take up during the lapse in appropriations. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).
COMM	Commissioner Staff	DC	Advise Commissioner on matters that the Commission may need to take up during the lapse in appropriations. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).

Office	Position	Location	Justification
OIA	Director	DC	This employee will monitor and respond to all international matters. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).
OPA	Director	DC	This employee will monitor and respond to all press inquiries. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).
OCE	Chief Economist	DC	This employee will be performing economic analysis. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).

Office	Position	Location	Justification
OIG	Inspector General	DC	This employee will monitor and respond to the hotline for allegations of waste, fraud, and abuse. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).
DMO	Director	DC	This employee will oversee all DMO activities. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).
DMO	Deputy Director for Surveillance	DC	This employee will oversee the overall market surveillance program and address large trader reporting data issues. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).

Office	Position	Location	Justification
DMO	Associate Deputy Director, Agriculture & Soft Commodities	DC	This employee will oversee market surveillance for products in the agriculture and soft commodities complex to detect/address major market disruptions. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).
DMO	Associate Deputy Director for Policy Review & Systems Support	DC	This employee will manage data flow and minimal quality control for large trader data. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).
DMO	Associate Deputy Director, Section One (System Safeguard Examinations)	DC	This employee will oversee market system safeguards to detect/address major market disruption related to enterprise risk management, information security, capacity planning, systems operations, business continuity, disaster recovery physical security and environmental controls. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, the employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operation in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).

Office	Position	Location	Justification
DMO	Senior Surveillance Analyst, Energy and Metals, Energy Unit	DC	<p>This employee will oversee market surveillance for products in the energy and metals complex to detect/address major market disruptions. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>
OGC	General Counsel	DC	<p>This employee will provide legal advice and support to the excepted activities of presidential appointees and excepted staff. This employee's presence is incidental but necessary to address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>
DOE	Director	DC	<p>This employee will oversee and coordinate filings in approximately 100 district court matters, which addresses an imminent threat to the protection of property implicated in those open and active litigation cases. In addition, this employee will determine when delaying matters would threaten life or property to determine when to recommend additional or different excepted personnel. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>

Office	Position	Location	Justification
DOE	Associate Director	DC	This employee will track electronic filings, analyze and respond to all filings made, participate in hearings on substantive matters that cannot be postponed due to risk to property if not pursued timely, and respond to emergency actions that arise. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).
DOE	Deputy Director	NY	This employee will track electronic filings, analyze and respond to all filings made, participate in hearings on substantive matters that cannot be postponed due to risk to property if not pursued timely, and respond to emergency actions that arise. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).
DOE	Deputy Director	KC	This employee will track electronic filings, analyze and respond to all filings made, participate in hearings on substantive matters that cannot be postponed due to risk to property if not pursued timely, and respond to emergency actions that arise. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).

Office	Position	Location	Justification
DOE	Deputy Director, Chicago Regional Office	CH	This employee will track electronic filings, analyze and respond to all filings made, participate in hearings on substantive matters that cannot be postponed due to risk to property if not pursued timely, and respond to emergency actions that arise. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).
DCR	Acting Director	DC	This employee will be responsible for overseeing all DCR activities. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).
DCR	Deputy Director for Risk Surveillance	DC	This employee will be responsible for overseeing, from a broad perspective, risk surveillance activities. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).

Office	Position	Location	Justification
DCR	Deputy Director for Examinations/ Associate Director	CH	<p>This employee will be responsible for overseeing, from a broad perspective, DCR surveillance activities and examinations, in particular those that have been designated as systematically important. She will track electronic filings made under 39.19, analyze and respond to filings made in substantive matters. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). James Ortlieb will be excepted from October 1-5. Julie Mohr will be excepted from October 6-until the end of the furlough due to a lapse in appropriations.</p>
DCR	Chief Counsel	DC	<p>This employee will be responsible for overseeing all continuity of operations issues and certain clearing-related issues. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>

Office	Position	Location	Justification
DCR	Associate Director	CH	This employee will be responsible for overseeing, from a broad perspective, risk surveillance activities. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).
DCR	Associate Director	CH	This employee will be responsible for overseeing, from a broad perspective, risk surveillance activities. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).
DSIO	Director	DC	This employee will be responsible for overseeing all DSIO activities. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).

Office	Position	Location	Justification
DSIO	Deputy Director, Examinations Branch	NY	This employee will be responsible for overseeing all FCM financial integrity and reporting activities. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).
DSIO	Deputy Director, Capital Margin and Segregation Branch	DC	This employee will be responsible for overseeing all intermediary capital, margin and fund segregation reporting activities, as well as FCM financial integrity and reporting activities. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).
DSIO	Deputy Director, Registration and Compliance Branch	DC	This employee will be responsible for overseeing swap dealer and intermediary registration and compliance activities. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).

Office	Position	Location	Justification
OED	Executive Director	DC	As Chief Executive Officer of the CFTC, this employee will be required to execute tasks that are necessary and incidental to the duties of CFTC employees whose responsibilities address an imminent risk to the safety of human life or the protection of property. Such issues relate to oversight of OED responsibilities, including security, payroll, financial, contract, and IT functions, and direction of adjustments to excepted employee designations as required by changes in the circumstances presented during a shutdown. The duties likewise will include advising and supporting the Chairman and Commissioners, as well as other excepted employees, on matters arising during lapse of appropriations.
OED	Chief Human Capital Officer	DC	This employee will provide ongoing support to the excepted activities of presidential appointees and excepted staff with respect to all matters relating to human capital. This employee's presence is incidental but necessary to address an imminent threat to the protection of property.
OED	Chief of Security	DC	This employee will provide physical security and oversight of the security of excepted staff and presidential appointees. (This employee also will accept mail and update hotline to notify staff to return to work.) This employee's presence is necessary to address an imminent threat both to the safety of human life (managing the security of those employees who are deemed excepted and are required to report to work) and to the protection of property (managing the security of the Headquarters building and the property contained therein). This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).

Office	Position	Location	Justification
ODT	Director	DC	<p>This employee will oversee all activities of ODT to ensure that the excepted employees of the Commission have the electronic and technological capabilities necessary to perform. This employee's presence is necessary to provide critical support that is incidental to the work conducted by the excepted employees. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>
ODT	IT Specialist	DC	<p>This employee will provide limited network support to ensure that the electronic infrastructure remains online to support excepted staff. This employee's presence is necessary to provide critical support that is incidental to the work conducted by the excepted employees. This employee will monitor email, network performance, server operations, and support data backups, and may provide limited customer support as time permits. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>

Office	Position	Location	Justification
ODT	IT Specialist	DC	<p>This employee will provide support to the Market Surveillance group to ensure the effective flow of large trader data into the ISS System. This employee's presence is necessary to provide critical support that is incidental to the work conducted by the excepted employees. This employee also will troubleshoot technology-oriented data issues that may impact the data loading process and ensure the ISS system is functioning for excepted staff. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>

## **Summary of CFTC Operations in the Event of a Lapse of Appropriations**

In the event that a lapse of appropriations occurs, the CFTC will severely curtail its operations until additional appropriations are enacted into law.

### **Operational During a Lapse of Appropriations**

The CFTC will maintain a limited staff of excepted employees: Division of Market Oversight (DMO), Division of Clearing and Risk (DCR), and Division of Swaps and Intermediary Oversight (DSIO) staff to perform oversight and surveillance of the futures markets, clearinghouses, and intermediaries; Enforcement staff to address open and active litigation cases; and certain other employees to perform work necessary and incidental to the execution of the aforementioned functions. The limited DMO/DCR/DSIO staff identified as excepted will only conduct a bare minimum level of oversight and surveillance, and the functions of the Division of Enforcement will largely cease.

Pursuant to 5 U.S.C. §7511(b)(1), the Presidentially-appointed and Senate-confirmed Commissioners are exempt from furlough and will continue to serve during a lapse in appropriations. In addition, the Office of Consumer Outreach and the Whistleblower Office will continue to perform normal functions during a lapse of appropriations because their operations are not funded by the Commission's annual appropriations.

### **Non-Operational During a Lapse of Appropriations**

Notwithstanding the limited functions that the excepted employees will perform, the vast bulk of the CFTC's operations will cease during a lapse of appropriations. This includes, but is not limited to:

- Most functions of the Division of Enforcement, including but not limited to: the review and investigation of victim complaints, initiating actions against wrongdoers and protecting any victim assets that may be at risk in such situations, and assisting other law enforcement agencies with criminal and regulatory matters.
- Most functions of DMO, DCR, and DSIO. With the exception of the minimal level of excepted employees needed for the oversight and surveillance of the commodities and futures markets the operations of DMO, DCR, and DSIO will cease.
- Work relating to rulemakings and some other responsibilities mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203.

- Most functions of the Office of the Executive Director, Office of Data and Technology, and Office of the General Counsel, except to the limited extent that work is incidental to the functions performed by other excepted employees addressing imminent risks to the safety of human life or the protection of property.
- All functions of the Office of the Chief Economist, Office of Legislative Affairs, Office of Public Affairs, Office of Diversity and Inclusion, and Office of International Affairs.