



CONTINGENCY PLAN

Updated: August 2020

Marketing and Regulatory Programs

Scope

This plan of action is developed based on the latest guidance for shutdown planning and activities for this organization, as relayed by the Office of Management and Budget (OMB) and the Department. This plan is subject to amendment as developments require and provided such amendments are consistent with applicable law.

The Department is subject to seasonal variations and at one time up to 80 percent of employees may need to report to work during a furlough, but this would be on an intermittent basis. When Category I funding is no longer available those employees listed in this category will either be furloughed or moved to either Excepted or Exempted and will show in either Category III or Category IV.

The functions and activities described herein are to be executed in accordance with all applicable statutes, regulations, policies, and delegations of authority.

OMB provides guidance on how to prepare for and operate during a funding gap in OMB Circular 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).

The Anti-Deficiency Act (<http://www.gao.gov/legal/lawresources/antideficiency.html>) prohibits agencies from incurring obligations in advance of, or that exceed, an appropriation. Thus, with certain limited exceptions, an agency cannot incur obligations when the funding source for the obligation is an appropriation that has lapsed. Any activities that would incur a new obligation must be suspended and are prohibited. Activities that are under way that would lead to an increased obligation or incurred costs must cease.

There are, however, limited exceptions to this general rule, including obligations incurred performing activities that protect life and/or property, incurred to accomplish an orderly shutdown of the normal functions of the agency, or where such payment activity is necessarily implied.

An agency must otherwise continue certain activities despite a lapse in their appropriations because the lawful continuation of other funded or excepted activities “necessarily implies” that these additional activities will continue as well. A “necessary implication” can arise when an agency needs to incur obligations, even though there has been a lapse in the appropriation against which those obligations would be charged, in order to implement:

- 1) An “orderly shutdown” when there has been a lapse in appropriations (as the Department of Justice has explained, “authority may be inferred from the Anti-deficiency Act itself for federal officers to incur those minimal obligations necessary to closing their agencies”);

- 2) "Excepted" activities including functions:
 - a. Authorized by statute or other legal requirement expressly authorizing an agency to obligate funds in advance of appropriations;
 - b. That address emergency circumstances such that the suspension of the function would imminently threaten the safety of human life or the protection of property;
or
 - c. That are necessary to the discharge of the President's constitutional duties and powers.
- 3) Congressionally authorized or appropriated functions for which Congress has provided funding that remains available during the lapse (including funds already obligated from the current fiscal year) where the suspension of the related activity (during the funding lapse) would prevent or significantly damage the execution of the terms of the statutory authorization or appropriation.

Marketing and Regulatory Programs

Animal and Plant Health Inspection Service (APHIS)
Agricultural Marketing Services (AMS)

Animal and Plant Health Inspection Service

Orderly Closure and Communications

Prior to Day 1, the following actions will be completed:

The Administrator, Deputy Administrators, Associate and Assistant Deputy Administrators, overseas Regional, Area and Program Managers, Executive Directors (EDs), Associate Executive Directors (AEDs), National Science Program Leaders, Laboratory Directors, State Plant Health Directors (SPHDs), Supervisory Facility Operations Specialists, Center Directors, Port Directors, Wildlife Services State Directors (WSSD), Wildlife Services Operational Support Staff Director, and other applicable Directors will identify those functions that need to be performed that are solely associated with an orderly shutdown of normal activities. Such functions may include but are not limited to:

- Identifying measures to secure records, personal property, real property, and facilities that will be maintained and protected until appropriate disposition is accomplished.
- Drafting a strategy for communicating with Agency employees, including the notice of furlough given to each employee.
- Drafting a strategy for communicating outside the Agency as necessary.
- Identifying all potential meetings, hearings, and other previously arranged Agency business that may need to be cancelled.
- Identifying all exempt and excepted employees and ensuring that employees have been identified consistently and fairly in compliance with applicable personnel regulations.
- Ensuring employee emergency contact information is updated.
- Identifying what Information Technology (IT) support, applications, contracts, and systems are needed to maintain exempt and excepted services.
- Identifying all employees in travel status, both domestic and international.
- Identifying all contractors and contracts that could be impacted by an impending shutdown.
- Identifying what instructions and procedures Human Resources Division (HRD) will provide to employees for the shutdown period.
- Identify the status of all critical HRD programs, housed outside of APHIS, to ascertain the availability during a shutdown period, such as payroll functions with the National Finance Center (NFC).

- Identifying appropriate Department contacts for communications purposes and orderly shutdown of the Agency.
- Identifying all potential mail and equipment deliveries, including vehicles to government occupied offices, adjusting for safe storage.
- Developing a plan to initiate bargaining over furlough related topics and initiating when appropriate.
- Establishing communication procedures with key USDA partners to determine any possible excepted activities that may require APHIS participation. This will include working with Foreign Agricultural Service (FAS) on upcoming international trade negotiations as well as regulatory activities with Food Safety Inspection Service.
- Training supervisors on their responsibilities during a furlough and what issues they may face at least one week prior to furlough.

Bargaining Unit Requirements

APHIS Labor Management and Employee Relations staff will provide the Unions with appropriate notice to the extent as may be required.

First half of Day 1 (First Day funds are not available):

Report to Work. Unless instructed otherwise by their supervisor, all employees will report to work as usual on the first scheduled work day following the determination that a shutdown is necessary. Those employees teleworking may “report” by telephone if they can conduct all necessary actions for an orderly shutdown from an off-site location.

Employee Notification. HRD will provide furlough instructions to supervisors. Supervisors will notify affected employees either verbally or in writing of the need to conduct an emergency furlough. Supervisors will also ensure that affected employees are provided either hard copy or electronic copies of: the Memorandum of Status to Employees; the SF-8 form (Unemployment Compensation for Federal Employees); and “questions and answers for furloughed employees,” which provides information on a variety of topics, including continuation of benefits coverage. Supervisors will document the employee’s receipt of notification—even if notified verbally. Notification may or may not be provided in advance of the actual furlough date. The notification procedures identified in the APHIS Emergency Notification System, Directive 1810.1, may be used in the interest of efficient notification if the Agency Head determines that it is impractical to provide advance written notice.

Employee Identification. The names of employees who are exempt or needed to carry out excepted activity will be transmitted to HRD, immediately upon identification. HRD will ensure that no personnel action is taken to furlough exempt or excepted-activity employees. Personnel actions to furlough all other Agency employees will be processed by Human Resources, as directed by the Office of Personnel Management (OPM). Employees who are to be furloughed will complete time sheet entry in WebTA, as instructed by their supervisor, as part of the Agency shutdown procedures described below. Supervisors will inform exempt and excepted employees of any changes in supervisory structure resulting from the shutdown (i.e. when supervisors are furloughed, and employees are exempt or excepted). Identified supervisors should have

sufficient training and experience to provide supervisory support, including reporting incidents impacting security and safety and health, and to conduct job hazard analyses for employees' assigned work that is different from their usual job functions.

Supervisors will:

- Issue “Notice of Furlough” and “Furlough Checklist” to all employees.
- Survey employees regarding any meetings scheduled on the first day of the furlough or later involving non-government entities and take appropriate action.
- Ensure all outstanding travel vouchers have been approved and processed via Concur for travel dates prior to the second day of the furlough.
- Ensure employees have canceled any reservations made outside of Concur (such as for hotel or rental car) for travel scheduled after the first day of the furlough.
- Provide detailed instructions to all employees designated as “*Exempt*” or “*Excepted*,” including those subject to recall only, on the following:
 - a. Nature of work assignments
 - b. Work site for furlough period
 - c. Expectations for communication
 - d. Tour of duty
 - e. Organizational contacts for the furlough period
 - f. Any other pertinent information
- Check and ensure that all items have been cleared from common break areas (remove food from refrigerator, clean and turn off coffee pots, etc.).
- Advise furloughed employees that they are not allowed to use government-issued equipment during the furlough period, except if placed in on-call status.
- Cancel all annual and sick leave for all non-excepted employees during the furlough period to include leave already commenced and approved. P.L. 116-1 allows excepted employees to use leave during a shutdown.
- Ensure employees in travel status have been directed to return home.
- Verify proper completion of all their employees’ T&As before departure on the first day of the furlough. WebTA may be accessed at: <https://wta.nfc.usda.gov/usda/>.
- Complete the Employee Furlough Checklist, to be provided by Human Resources management.
- Set out-of-office notifications with pre-approved scripted message on all common email and voice mail accounts (main line phone numbers, group email boxes, etc.).
- Ensure they have their employees’ personal contact information, and that their employees have theirs, which provides a channel of communication, providing support for employees if questions arise during the shutdown. By regulation, employees must give a method of contact during an emergency.
- Ensure furloughed employees receive the following guidance to begin shutdown operations.

Employees reporting to work will be instructed to continue their exempted work, begin their excepted activity work or, for furloughed employees, begin shutdown operations to include:

- Secure all personally identifiable information (PII) and confidential or sensitive data in the work area and clear the open, accessible work space as appropriate.
- Provide supervisor with current personal contact information, including personal e-mail address and personal phone number.
- Complete any organization-specific shutdown activities as directed by their supervisor.
- Discuss cancellation of any meetings scheduled on the first day of the furlough.
- Discuss cancellation of travel scheduled after the first day of furlough, including canceling any reservations made outside of Concur (such as for hotel or rental car).
- For those employees in travel status, immediately contact supervisor for instructions on returning home.
- For the ease of resuming work, document the status of assignments and projects so they can be resumed, transferred, or otherwise appropriately handled when the funding situation is resolved.
- Remove or secure all valuable personal belongings.
- Dispose of/remove all perishable food and personal items from work and break areas.
- Ensure all small appliances are turned off and unplugged.
- Secure all government equipment, especially portable electronic devices.
- Make sure that work time is recorded in WebTA as instructed. WebTA may be accessed at: <https://wta.nfc.usda.gov/usda/>.
- Set voicemail and email out-of-office notification with the pre-approved scripted message provided by Department officials.
- Ensure they have their supervisor's personal contact information, and that their supervisor has theirs. This provides a channel of communication, providing support for employees if questions arise during the shutdown.
- Ensure computers are physically secure but leave the computers connected to the network so that they continue to receive critical security patches. Employees should be logged off the network.
- Lock the office door, if applicable, at departure.
- Regularly review the USDA Be Prepared website <https://www.dm.usda.gov/beprepared/index.php>. This site provides employee resources during a shutdown.

The APHIS Information Security Coordinator (ISC) will contact the Local Information Security Specialists to ensure that all classified materials and equipment under their control is accounted for and remains secure. The Local Information Security Specialists will:

- Conduct an inventory of their classified holdings;

- Ensure all classified materials and equipment are secured the day prior to the beginning of the furlough; and,
- Ensure their secure room is closed, locked, and alarmed.

Notification to Contractors

The Mission Area Senior Contracting Official (MA-SCO) will ensure that all applicable Federal Acquisition Regulations (FAR) and Agriculture Acquisition Regulation Advisories (AGAR) are followed. In addition, the MA-SCO will direct that all existing contracts be reviewed to determine whether the contracts are funded with appropriated, multi-year or no-year funds. If any contract is funded in excess of available appropriations in error, e.g., a period of performance has been stated beyond the expiration of a Continuing Resolution, the error will be corrected so as to limit the Government's liability.

For contracts funded with current year appropriated funds, contracting officers will issue stop work orders or suspension of work orders, consistent with FAR Part 42, with the exception of contracts whose purpose is the protection of life or property or those services needed for the orderly shutdown of government operations. Contracts that are funded from funds previously awarded/obligated and available would continue.

Second half of Day 1:

Managers and supervisors will coordinate the following activities intended to shut down Agency's operations:

- Document the status of cases and projects so that they can be resumed, transferred, or otherwise appropriately handled when APHIS' ultimate funding situation is determined.
- Prepare files for permanent storage, transfer to related agencies, or other disposition.
- Submit a final list of employees through the Associate Deputy Administrators, EDs, AEDs, National Science Directors, Laboratory Directors, SPHDs, Supervisory Facility Operations Specialists, WSSDs, Regional Directors, overseas Regional Managers, Field Operations Directors, District Directors, or other Directors, to their respective Deputy Administrator and then to the Associate Administrator no later than the end of Day 2.
- Contracting Officers and Contracting Officer Technical Representatives will continue to contact all appropriate contractors and vendors to let them know the status of their work and whether or not it is suspended.

Day 2:

Employees who were previously identified as required to perform functions necessary for the orderly shutdown of program activities will report for work.

Employees leading, directing, and performing work identified as exempted or excepted from shutdown procedures (described in Sections II- Exempted and III-Excepted) will continue to work. Excepted employees may be placed in an "on call" status, depending on the nature of the activity and duration of the shutdown.

Employees will be directed to perform only those activities as enumerated earlier (Attachment II). As each shutdown function is completed, the supervisor must notify the supervisor at the next highest level or, at headquarters, the respective Deputy Administrator, of completion.

Each employee whose shutdown function is completed will be furloughed immediately and formally notified by their supervisor or other appropriate manager if the supervisor is not available.

There will be daily communications by the Administrator's Office on the status of the shutdown procedures with the Department contacts previously identified.

Day 3 and until completion of close down procedures:

Employees who were previously identified as required to perform functions necessary for orderly shutdown of program activities will report for work, only if necessary.

Employees completing shutdown functions will continue tasks as outlined under Day 2 for each succeeding day until the Administrator determines the shutdown is complete.

Employees leading, directing, and performing work identified as exempted or excepted from shutdown procedures (described in Sections II- Exempted and III-Excepted), will continue to perform the identified activities. There will be daily communications by the Administrator's Office on the status of the shutdown procedures with the Department contacts previously identified.

Should the appropriations hiatus last more than 5 days, the APHIS Administrator and any other officials he or she deems appropriate will review excepted and exempted Agency operations and any additional guidance provided by OPM and OMB. They may update the shutdown plan as the situation develops and circumstances warrant.

Resumption of Duties:

Furloughed employees should monitor the news for information and should report back to work on their next scheduled workday once another continuing resolution or an appropriation bill is enacted (passed by the House and the Senate and signed by the President). APHIS has a start-up plan for employees and supervisors to assist in an orderly return to duties. The start-up plan is posted on the APHIS portal (<https://my.aphis.usda.gov>).

Exempted Activities

Trust Funds

APHIS receives revenue for activities requested by cooperators. These activities include preclearing and inspecting fruits, vegetables, and nursery products before they are shipped to the United States; inspecting commercial birds in an APHIS-approved commercial bird quarantine facility; and other technical assistance. All costs that APHIS incurs to provide these services are the responsibility of the cooperator and must be paid in advance.

User Fees

Animal and Plant Import and Export:

As provided in 21 U.S.C. 136(c)(2), APHIS may charge and collect fees for the costs incurred in inspecting and quarantining animals imported into and exported from the United States; performing certain laboratory veterinary diagnostics and select agents services; and issuing phytosanitary certificates for plant materials bound for export. All fees collected shall be credited to the accounts that incur the costs and shall remain available until expended without fiscal year limitations (21 U.S.C. 136(c)(3)).

Agricultural Quarantine and Inspection:

As provided in 21 U.S.C. 136(a)(1)(A), APHIS may charge and collect fees for the costs incurred in providing agricultural quarantine and inspection services in connection with the arrival at a port in the customs territory of the United States, or the preclearance or preinspection at a site outside the customs territory of the United States, of an international passenger, commercial vessel, commercial aircraft, commercial truck, or railroad car. APHIS will maintain additional personnel who can be called upon to assist with conducting these activities when requests for services exceed the exempted workforce capacity during and outside of normal business hours. APHIS transfers a portion of these fees to the Department of Homeland Security's Customs and Border Protection (CBP). All fees collected shall be credited to the accounts that incur the costs and shall remain available until expended without fiscal year limitations (21 U.S.C. 136(a)(6)).

Reimbursable Overtime

Under the same authorities cited above for user fees, APHIS charges for the additional overtime costs associated with providing inspection services normally performed during regular hours and covered by established user fees. These funds cover the costs of the services provided and are only received when the services are requested and provided. The amount of reimbursable overtime is subject to requests for services to occur outside of normal business hours and is scheduled as shipments arrive needing immediate clearance.

Building and Facilities

There are incomplete construction projects that are funded from money previously appropriated and available until expended. This work would continue because contracts have already been awarded and funding is already obligated. No USDA employees would be involved.

No-year funding

APHIS has responsibility to respond to agricultural emergencies involving invasive pests and diseases. APHIS' responses are supported through emergency transfers of Commodity Credit Corporation (CCC) no-year, mandatory funding. APHIS will continue these operations to protect U.S. agriculture and forests, including current ongoing emergency programs.

APHIS carries out certain appropriated agricultural programs that have the ability to carryover funding into the next fiscal year. APHIS will maintain program operations using carryover appropriated balances to mitigate the risks associated with animal and plant pests and diseases,

including wildlife damage management activities. The carryover funding is sufficient to cover the salaries and benefits for employees working on these activities into the next fiscal year.

Reimbursable Agreements

APHIS receives funds through cooperative service agreements for activities requested by cooperators. For example, APHIS is working in support of the Department of Defense (DOD) to minimize the risk of transport and establishment of invasive brown tree snakes to Hawaii, other islands, and the U.S. mainland so that operations on Guam and the Pacific can continue to support national security purposes. This activity is funded through cooperative agreements with the DOD and the Department of the Interior.

APHIS also provides scientific expertise in reducing human-wildlife conflicts, including wildlife hazards at airports, military bases throughout the United States and the world, and in protecting agriculture, natural resources, and human health and safety. To minimize the likelihood of catastrophic or major-damage bird strikes and other wildlife conflicts, wildlife biologists provide direct services to stakeholders including wildlife harassment, habitat modification, or wildlife removal.

Foreign Staff

APHIS has exempt positions overseas that are funded by user fees as well as through trust fund agreements and reimbursable agreements. These employees conduct the activities described above.

Farm Bill Section 10007

The Agricultural Act of 2014 consolidated two of APHIS' Farm Bill programs -- the Plant Pest and Disease Management and Disaster Prevention Program (formerly Section 10201) and the National Clean Plant Network (formerly Section 10202) -- now under Section 10007, Plant Pest and Disease Management and Disaster Prevention Program. During the fiscal year, the Farm Bill team reviews, rates, and ranks approximately 1,000 suggested projects received by the Agency. The Agency provides funding to State departments of agriculture, territories, academia, and tribes, non-profits and private entities. Projects include training and deployment of canine teams to cooperators, developing survey methodology, procuring traps and lures that APHIS distributed nationwide to cooperators in many pest programs, outreach efforts to inform the public and make them aware of invasive plant pests, and supported development of an improved data management system for use by States and territories, other cooperators, and APHIS.

APHIS also administers the USDA responsibility to establish a "National Clean Plant Network" (NCPN), a program under which a partnership of clean plant centers is organized for diagnostic and pathogen elimination services to produce clean propagative plant material and maintain blocks of pathogen-tested plant materials in sites located throughout the United States. Clean plant material may then be made available to States for certified clean plant programs and to private nurseries and producers. USDA consults with State departments of agriculture, land grant universities, and non-land grant colleges of agriculture.

APHIS Plant Protection and Quarantine (PPQ) has ongoing responsibilities which include program governance, addressing critical/emerging issues, developing policy and protocols, education and outreach, strategic planning, stakeholder engagement, and managing the cooperative and agreements. Therefore, APHIS employees will continue to work and support the program.

Farm Bill Section 2408

The Agricultural Improvement Act of 2018 established a Feral Swine Eradication and Control Pilot Program under Section 2408 to respond to the threat feral swine pose to agriculture, native ecosystems, and human and animal health. APHIS protects natural areas and native wildlife from invasive species, such as feral swine.

Farm Bill Section 12101

The Agricultural Improvement Act of 2018 established the Animal Disease Prevention and Management Program under Section 12101 to address the increasing risk of the introduction and spread of animal pests and diseases affecting the economic interests of livestock and related industries of the United States.

United States-Mexico-Canada Agreement

The United States-Mexico-Canada Agreement Implementation Act (P.L. 116-113) provided funding for enforcement of the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et. seq.). The agency carries out activities to prevent entry of illegally harvested timber and other products suspected of being shipped through Mexico and mislabeled of Mexican-origin.

Excepted Activities

APHIS conducts the following essential activities to the extent that they protect life and property, including:

1. Activities essential to ensure continued public health and safety, including safe use of food and drugs and safe use of hazardous materials;
2. Border and coastal protection and surveillance;
3. Protection of Federal lands, buildings, waterways, equipment and other property owned by the United States;
4. Law enforcement and criminal investigations;
5. Emergency and disaster assistance;
6. Activities necessary to maintain protection of research property.

Activities essential to ensure continued public health and safety, including safe use of food and drugs and safe use of hazardous materials

The APHIS Emergency Management, Safety and Security Division's Safety, Health and Environmental Protection Branch is responsible for providing oversight and technical consultation on all environmental, health, and safety issues for exempted and excepted

employees. This includes areas such as occupational health, biological safety, safety and industrial hygiene, workers compensation, drug free workplace, and environmental protection. Activities may include but are not limited to accident investigations involving government owned vehicles and aircraft, and deaths. The APHIS/ Agricultural Marketing Service (AMS) Occupational Workers' Compensation Program Manager and APHIS Drug-Free Workplace Program Manager is responsible for ensuring workers' compensation claims are filed within the regulatory requirements, claims are continually managed, and post-accident drug testing is accomplished within the regulatory requirements. The APHIS Emergency Management, Safety and Security Division's Security Branch conducts investigation of security threats and incidents, and workplace violence. Personnel to support these safety and security activities will be available on a case-by-case basis—similar to their weekend responsibilities but with no requirement that they stay at their duty stations or stay within cell phone range—to respond as necessary to provide technical assistance and conduct investigations for exempt and excepted activities.

APHIS' Safety and Security Unit (SSU) is responsible for providing oversight and technical consultation on all environmental, health, safety, and security issues for employees of the National Centers for Animal Health (NCAH) in Ames, Iowa. Responsibilities include areas such as occupational health, biological safety, safety and industrial hygiene, physical security, environmental protection, and select agent programs. A core SSU staff will be maintained to address any safety and security issues that may arise for those exempt and excepted APHIS or ARS personnel carrying out exempt and excepted laboratory/support services at the NCAH.

Animal Care (AC) regulates entities required to be licensed or registered under the Animal Welfare Act. If conditions for covered animals result in suffering as a result of failure of the licensee to follow the provisions of the regulations or standards, APHIS may confiscate the animal(s) for care, treatment, or humane disposal. In the case of dangerous animals, AC may be called in to capture and contain these animals. AC will require some of its staff to be "on-call" for these types of situations. In the event AC is in the midst of a confiscation when a lapse in appropriations occurs, involved AC employees will finish the confiscation work before reverting to either on-call or furloughed status.

Biotechnology Regulatory Services (BRS) regulates the safe development and use of certain Genetically Engineered (GE) organisms that may pose a risk to plant health, to include unintended effects on the environment, food safety, and food security. As part of these efforts, BRS regulates the introduction (importation, interstate movement, and release into the environment, or field testing) of GE organisms. This activity includes responding to incidents involving non-compliance with the conditions placed on these introductions. In any given year BRS oversees more than 2,000 field trials and thousands of requests for movements and importations of regulated GE materials. When an incident occurs that is not in compliance with the regulations and/or conditions placed on the regulated activity, responsible entities are required to contact BRS via its compliance reporting systems, phone line or e-mail system, within a set period of time to report the incident. BRS then begins a process to assess and investigate the incident, often with the assistance of inspectors from PPQ, and as needed, investigative officers from Investigative and Enforcement Services (IES).

During a Government shutdown, BRS will be required to monitor the BRS compliance call line on a daily basis in case a responsible party reports an incident in which regulated material being

field tested, moved intrastate, or imported results in an unauthorized release into the environment. In doing so, BRS will require some of its staff to be “on-call”. The activities provided by these employees will be essential to protecting agriculture and the environment from potential plant health risks.

Border and coastal protection and surveillance

Agricultural quarantine and inspection and cattle fever tick surveillance activities prevent the introduction of animal and plant pests into this country that would be potentially damaging to American horticulture and livestock. This work includes pre-departure inspections at ports in Hawaii and Puerto Rico (inspections of travelers before they depart for the continental United States), and livestock movement quarantines and tick treatments for cattle and deer along the U.S.-Mexico border. The services rendered by these employees protect the United States from devastating incursions of animal and plant pests and diseases that could cause substantial property losses to U.S. farmers and ranchers.

APHIS Security staff will be available on a case-by-case basis to respond to security incidents for employees working on the border and in Mexico—similar to their weekend responsibilities but with no requirement that they stay at their duty stations or stay within cell phone range.

Protection of Federal lands, buildings, waterways, equipment and other property owned by the United States

APHIS conducts its programs in a number of owned or leased facilities, including laboratories that hold select agents. If these properties are not maintained and secured, then the Government would lose a considerable financial interest and future replacement would be several times more costly than original costs. APHIS’ facilities include the NCAH, the National Wildlife Research Center (NWRC), Wildlife Services Pocatello Supply Depot, and WS field sites, and the Center for Plant Health Science and Technology, among others. Also, personnel will be available to suitably store lab samples received daily, for testing at a later date and separate out emergency samples and user fee samples for regular testing.

APHIS Security will coordinate facility access using the enterprise physical access control system (EPACS) for facilities that support exempted and excepted personnel. Facilities on the EPACS auto-unlock and lock are based on operational need and these changes need to be programmed. APHIS operated facilities will remain operational to support exempted and excepted activities.

Law enforcement and criminal investigations

IES, provides investigative and enforcement support relating to serious alleged violations of Federal statutes and regulations under APHIS’ jurisdiction that require immediate investigative attention (such as biotechnology that impacts health, American agriculture, or trade; animal and plant diseases that present a serious risk of harm to health or American agriculture; animal welfare violations resulting in animal suffering; or border-related alleged violations that present a serious risk to health or American agriculture). IES employees will be placed on-call and activated, as appropriate, to support APHIS in its response(s) to significant events.

Animal Care employees will also be placed on-call to review complaints and significant events using predetermined criteria to determine if a response is warranted during the period of lapse in appropriations. Additional employees may be called in to respond as necessary.

Emergency and disaster assistance

Should an animal or plant health emergency occur, APHIS employees needed to support a response will be activated, as appropriate. APHIS' Emergency Management, Safety, and Security Division's staff will be available as needed to activate the APHIS Dr. Jere L. Dick Operations Center (JDOC). Two JDOC personnel will be available on an as-needed basis only to activate the JDOC and its equipment, and to perform related assistance duties. In the event of an ongoing outbreak, the Agency will maintain adequate personnel to support the incident.

Foreign animal disease (FAD) diagnosticians and incident command system (ICS) teams will be available on a case-by-case basis to respond to FAD investigations and FAD emergencies—similar to their weekend responsibilities as emergency response officials—but with no requirement that they stay at their duty stations or stay within cell phone range. Similarly, one public affairs specialist and one Agency Web specialist will be available on an as-needed basis to post information about a FAD outbreak or other emergency. Laboratory personnel will be available to run tests on samples associated with FAD investigations, and, at the beginning of the period, to close out pending lab tests.

Rabies control is critical along the border with Mexico and in other areas of the United States to prevent reintroduction and spread of the canine rabies virus and to protect public and animal health. The rabies management strategy requires an annual distribution of rabies vaccine to be effective in preventing and controlling the spread of this disease.

PPQ has ongoing plant health emergency and domestic programs that would need to continue in the event of a shutdown. In addition, PPQ has ICS teams that are on-call to respond to new or developing plant health emergencies.

APHIS serves as the coordinating agency and as a primary agency for Emergency Support Function #11 (ESF#11) of the National Response Framework. ESF#11 personnel will be available to respond to activations of ESF #11. These employees provide agriculture and natural resources support when activated under a FEMA Mission Assignment. Depending on the funding source, APHIS personnel activated during a lapse of appropriations may be funded in entirety (including salary, overtime, and travel) by FEMA. Activities could include pre-activation situational awareness activities if funded by FEMA Mission Assignment. These personnel are essential to the national disaster response mission. APHIS provides technical assistance and subject matter expertise to FEMA to coordinate response under all five functions of ESF#11. FEMA will notify the USDA Operations Center of any activations of ESF#11. The USDA Operations Center will notify the APHIS Security Officer, who will notify the ESF#11 National Coordinator or appropriate ESF #11 Regional Coordinator. Mission Assignments will be negotiated prior to activation and mobilization of responders.

APHIS employees who provide radiation response support to the interagency Advisory Team for Environment, Food and Health, or the USDA Advisory Team will be available on a case-by-case basis to respond to activations—similar to their weekend responsibilities but with no requirement

that they stay at their duty stations or stay within cell phone range. Requests for support will be made by the USDA Operations Center and funded in entirety from response funds.

Activities necessary to maintain protection of research property

APHIS' NWRC research scientists develop wildlife damage management methods to reduce threats to human health and safety. APHIS will maintain staff at NWRC and its associated field sites to care for the animals being studied or maintained. APHIS also houses animals at its National Veterinary Services Laboratories (NVSL), including its Foreign Animal Disease Diagnostic Laboratory (FADDL), that are necessary for diagnostic and methods development work.

In several APHIS programs, sterile or biological-control insects are continuously reared in order to retard the spread or eliminate harmful insect infestations in the United States or prevent them from reaching our borders. If operations were to cease at these facilities, these insects would no longer be produced and starting these programs again would be costly and time consuming; failure to continuously release sterile insects in barrier zones would allow pests to spread and reverse years and billions of dollars in investments.

Foreign Staff Activities¹

APHIS' overseas operations fall under U.S. State Department authorities and host country labor laws. APHIS' U.S. direct hire (USDH) employees paid by appropriated funds are designated as excepted according to the Office of Management and Budget guidance. This guidance allows activities that provide for the national security, including the conduct of foreign relations essential to the national security or the safety of life and property, to continue in the absence of appropriations. APHIS' locally employed staff (LES) positions are also considered excepted. Local labor laws generally prohibit these employees from being furloughed and require the United States to continue to pay their salaries. Some overseas employees are not funded by annually appropriated funds and are considered exempt from furlough.

A limited number of headquarters employees will provide basic management and administrative support and coordination of services as needed for APHIS employees working overseas through their excepted and on-call status.

Agency-wide Management and Support

During a lapse in appropriations, APHIS senior level management will be maintained at a minimal level to staff the Office of the Administrator as well as program level exempted and excepted activities. Adequate support staff from the HRD; Financial Management Division; Acquisition and Asset Management Division; Information Technology Division; and Emergency Management, Safety, and Security Division will be maintained to support APHIS program delivery in Categories II and III, and also to provide administrative services for exempt and excepted employees of the AMS, FAS and the Merit Systems Protection Board (MSPB). APHIS administrative staff will provide basic services in procurement, contracting, facility engineering, mailroom support, labor and employee relations, human resources, personnel actions including

¹ This language was coordinated with FAS' Office of Foreign Service Operations.

death benefits, furlough and staffing actions, payroll, worker's compensation budget and finance, accounting, emergency support, security services and information technology.

Agricultural Marketing Service (AMS)

Exempt Activities

Employees who are fully funded by funds that are available during a lapse in appropriations are exempt employees. Examples of these funds are:

- Mandatory and permanent appropriations (e.g., Farm Bill-funded Programs, Domestic Commodity Procurement, Marketing Agreements and Orders)
- Reserve balances and/or revenues collected for user funded activities (e.g., Grading, Classing, PACA, FGIS)
- Reimbursements from non-Federal funds – advanced collections will be required to continue these operations (e.g., oversight of Research and Promotion Boards)

Partially Exempt Activities

Employees who are funded by multiple funding sources may be partially exempt to the extent their salaries are paid with available (exempt) funding. The following are examples of partially exempt employees.

- Office of the Administrator and its associated Staff Offices
- Deputy Administrators and their Staff Offices (*excludes the National Organic Program Deputy Administrator whose activities are fully financed with appropriated funds*)
- Management and Analysis Program
- Federal Grain Inspection Service Field Management Division and Technical and Science Division

Excepted Activities

Employees who are partially funded or fully funded by appropriated funds may be considered “excepted” if the activity they support meets OMB’s criteria.

- The AMS Administrator and Associate Administrators will also work in an excepted status to maintain support of excepted activities (e.g., Market News) and manage the orderly shutdown process.
- AMS and MRPBS administrative staff will provide basic services in procurement and contracting; labor and employee relations, human resources, personnel actions including death benefits, furlough and staffing actions, payroll, and worker's compensation; billings and collections and financial management; and information technology support. Additional staff will provide coordination and guidance to AMS employees during shutdown operations and to exempt and excepted employees during a shutdown. These administrative support employees will service both the exempt and excepted employees. The support is for regularly ongoing work funded other than by annual appropriations and permissible excepted activities. Excepted activities include the Market News program and disaster response for protection of life and property.
- Deputy Administrators and appropriate staff who are fully supported by appropriated funds will be changed to excepted status on an as needed basis to respond to specific

issues such as disaster response, food safety support, or agricultural transportation emergencies that arise during their furlough status. The Administrator or Associate Administrators will determine when an employee is brought out of a furlough status and the duration.

- Deputy Administrators and appropriate staff who are partially supported by appropriated funds (partially exempt) will also be excepted on an as needed basis during their furlough periods to respond to specific issues such as disaster response, food safety support, or agricultural transportation emergencies that arise during their furlough status. The Administrator or Associate Administrators will determine when an employee is brought out of a furlough status and the duration.
- The Market News program is an excepted activity based on the criticality of the market news reports to the overall agricultural industry. The Administrator or Associate Administrators, in consultation with the Deputy Administrators, will determine the extent of the excepted activities to minimize market disruption while maintaining adherence to the OMB guidelines.
- The AMS Emergency Management Specialists perform safety protection and environmental emergency work that involves human life. User fees partially fund the employment activities of this position. If called to work during an emergency, the portion of the activities not supported by user fees will be considered excepted service.

Furloughed Employees

Furloughed employees include those that work in any programs that are funded 100% with appropriated funds.

Shutdown Guidance

- **Reporting to Work** – Unless otherwise instructed by their supervisor, all employees will report to work at their normal reporting time on the first work day following the expiration of a continuing resolution with no subsequent authorization. Employees will be instructed to either begin their excepted activity work or complete any necessary close-down activities and leave their worksite as directed by their supervisor or competent authority.
- **Shutdown activities during 1st Day** – AMS employees will primarily need ½ of a day to complete shutdown activities. Supervisors will make the necessary assignment of duties to ensure an orderly shutdown occurs. Contracting officers will notify contractors of their operating status and AMS managers will notify cooperating agencies as needed. Shutdown activities will include preparing all records for transfer to the appropriate records holding area, issuing notices of cancellation of ongoing program activities, and inventorying and preparing all personal and real property and facilities for appropriate disposition.

In order to ensure the continuity of operations for exempt activities, program managers will provide a shutdown impact report to the Administrator which will include each Program's budget activities, staff years, location, operating status, activity impact as a result of furloughed staff in other programs or agencies, and any issues with administrative support as a result of reduced support from APHIS MRPBS or Department offices.

Specific activities to shut down program operations include, but are not limited to the following:

✓ **Employee Responsibilities:**

- Protect sensitive and personally identifiable information by securing it in locked files or offices (*includes all PII information*)
- Ensure that all property and records assigned to furloughed employees are accounted for and are appropriately secured
- Cancel meetings and other previously arranged business; inform parties who are involved in Agency matters, such as State governments, other Federal agencies, contractors and private entities of the cessation of normal business
- Cancel any travel in the Concur travel system that was scheduled after the start date of the funding hiatus
- Document the status of assignments and projects so they can be resumed, transferred or otherwise handled when the furlough ends
- Activate standardized 'out of office' message in email to indicate the employee is out of the office until further notice
- Update voice mail to indicate employee is out of the office until further notice
- Record all time worked during the pay period properly in WebTA and submit to approving authority prior to leaving on furlough
- Ensure there is no open food in the work area; place trash outside of any locked space
- Ensure all lights, fans, heaters, etc. are turned off
- Post signage on office doors indicating closure due to a lapse of funding
- Stop using transit benefits while in furlough status during the lapse of funding
- Employees will not use government-owned computers and electronic devices while in furlough status

✓ **Supervisor Responsibilities:**

- Cancel annual and sick leave scheduled for furloughed employees during the lapse of appropriation (*including leave already started*). Employees with paid leave (*annual, sick, credit, compensatory, etc.*) scheduled and approved for days designated as furlough days, will not be allowed to take the leave, since furloughs are considered to be non-workdays. Exempted employees may be allowed to take leave as they would at any other time, since funds are available to pay their salaries
- Advise employees being furloughed that the agency will not accept their voluntary services during a funding hiatus as it is prohibited in the Antideficiency Act
- Advise employees who are furloughed they are not authorized to use Government equipment (laptops, cell phones, etc.) or transit benefits during the funding hiatus as they are not in work status and cannot work voluntarily

- Ensure shutdown activities have been appropriately completed; secure the facility, as applicable
- Ensure that emergency contact information for employees is current
- Employees in travel status, who are impacted by a funding hiatus, will be advised to return home prior to the expiration of funding authority. Travel agents will be instructed not to issue airline tickets for activities impacted by a shutdown unless they receive certification from travel coordinators that funds are available. For those employees funded from multiple sources, only travel directly related to programs not impacted by a shutdown should continue and be charged directly to that activity (no distributed accounting should be used)
- Advise travelers that travel may need to be resubmitted in Concur for approval and/or ticketing if applicable
- Certify that all T&As are properly recorded in WebTA before departure
- Suspend transit benefits for furloughed employees

AMS Website Information

AMS will coordinate with MRP IT Services in support of the following items:

- Modify the AMS website to allow public access to information (guidance, forms, etc.) for those AMS programs that continue in operation during a lapse in appropriations.
- Maintain at least one cyber-security specialist on duty during each workday of a funding lapse period to respond to cyber incidents identified by the Agency or reported to AMS by the Department or DHS.

Furlough Notice to Employees

- Furlough notices will follow the guidance and timeline as prescribed by the Department
- In general, each employee to be furloughed will be notified orally and in writing of the decision to furlough. In addition, affected employees will be provided copies of the SF-8 Form (Unemployment Compensation for federal Employees) and questions and answers for furloughed employees, which provide information on a variety of topics, including continuation of benefits coverage. The supervisor will document each employee's receipt of written or verbal notification. The written notice may or may not be provided in advance of the actual furlough date; however, all furloughed employees will receive written notification at some point.
- Employees should be instructed not to report back for duty unless they are notified by official notification (supervisor, OPM) or media sources, that appropriations legislation or a Continuing Resolution has been enacted. Supervisors should ensure that they have a means of contacting employees.

Activities Identified to Continue Operations during a Shutdown

As a result of the way in which certain AMS programs are funded, a lapse in appropriations will have varying impacts on our ability to continue AMS activities. The following AMS programs will continue to operate during the furlough because they are either sustained with non-appropriated funds, mandatory funds (not annually appropriated), or the activity provided from a program is needed for the protection of property:

1) Funded by User Fees & Assessments

- ✓ Cotton Classing
- ✓ Cattles Futures
- ✓ Dairy Grading
- ✓ Federal Grain Inspection Service
(for user fee funded activities only,
see below for activities funded by
appropriations)
- ✓ Laboratory Operations
- ✓ Meat Grading
- ✓ Perishable Agricultural
Commodities (PACA)
- ✓ Poultry Grading
- ✓ Tobacco Grading
- ✓ Plant Variety Protection Program
- ✓ Seed Inspection
- ✓ Quality Assessments and Audits
- ✓ Specialty Crop Inspections
- ✓ Fee-funded Warehouse Examinations

2) Funded by Mandatory Appropriations

- ✓ Farm Bill-funded Activities
- ✓ Commodity Purchase Services
- ✓ Marketing Agreements & Orders

3) Funded by Non-federal Reimbursements

- ✓ Research and Promotion Programs

4) Excepted Activities

- ✓ Market News and Market News Support Staff

Activities Identified to Not Operate During Shutdown

The following AMS programs are 100% funded with annually appropriated funds and will not be continued during a government shutdown:

- ✓ Country of Origin Labeling
- ✓ Federal Seed
- ✓ Federal-State Marketing
Improvement Program
- ✓ All compliance, standardization,
methods development, and
international monitoring activities
conducted by the Federal Grain
Inspection Service
- ✓ International Food Procurement
- ✓ National Organic Program
- ✓ Packers and Stockyards Program
- ✓ Pesticide Data Program
- ✓ Shell Egg Surveillance
- ✓ Standardization
- ✓ National Bioengineered Food
Disclosure

Offices Identified as Partially Funded to Operate During Shutdown

The following AMS offices are identified for partial furlough based on appropriated funding, but will continue during a government shutdown to the extent their salaries are paid with excepted or exempt funding:

- ✓ Office of the Administrator and its associated Staff Offices
- ✓ Deputy Administrators whose programs include exempt and excepted activities and their management staff

- ✓ Federal Grain Inspection Service Field Management Division and Technical and Science Division
- ✓ Management & Analysis Program
- ✓ Transportation & Market Development (Grants oversight management for Farm Bill Funded grants will continue)
- ✓ Fair Trade Practices Program
- ✓ Commodity Procurement Program

External Inter-Agency Administrative Support

AMS will work with the other USDA agencies that provide administrative services through reimbursable agreements to confirm what services will be available for AMS excepted and exempted employees during a government shutdown. AMS will coordinate with MRP IT Services staff who will provide baseline technical information technology assistance, ensure network security and operations.

Short and Long-Term Impacts for Activities Not Operating During Shutdown

Short-term (1-5 days): A discontinuation of all Packers and Stockyards Program's activities will hinder the program's enforcement of the Packers and Stockyards Act. Similarly, a discontinuation of FGIS' compliance activities will affect AMS' ability to ensure that the U. S. Grain Standards Act, applicable provisions of the Agricultural Marketing Act of 1946, and applicable regulations are implemented accurately and uniformly throughout the official grain inspection and weighing system. The inability to investigate alleged violations could hamper corrective action in the long term. This could have an immediate impact on members of industry if marketing is disrupted or conducted under inappropriate conditions due to the violations.

Short-term (1-5 days): Methods development activities include applied research or testing that produces new or improved techniques for measuring grain quality. Even a short-term disruption of methods development activities could affect projects where the ongoing collection and testing of new crop samples is critical. AMS' international monitoring programs monitor the quality and weight of grain shipments between origin and destination ports; responds to grain quality or weight complaints received through the Foreign Agricultural Service or other sources; and briefs representatives of importing countries both in the U. S. and abroad on the roles and responsibilities of AMS. Additionally, the international monitoring program works with USDA sister agencies, the Food and Drug Administration, and cooperator organizations to increase awareness of AMS' roles and responsibilities in the U. S. and abroad. One potential impact of shutdown may be a delay in addressing a discrepancy of an urgent nature, should one arise. For example, an importer alleges that a cargo is contaminated with a toxic substance. Such a situation could have a severe adverse impact on the image of American agriculture as a supplier of high quality, wholesome products. Such a situation could also disrupt orderly trade if, for example, the vessel was detained, the cargo was unnecessarily destroyed, or the payment was withheld.

Long-term (2-4 weeks): Suspension of regulatory and oversight activities for longer than a few days will impact the organic industry (National Organic Program). State cooperators that support the Pesticide Data, Country of Origin Labeling, and Federal Seed Act programs will be impacted by suspended operations and halted Federal reimbursements. Reporting on agricultural

transportation and market development activities that strongly support communities and smaller farmers/ranchers will not be available. As the timeframe expands, the suspension of appropriated marketing support activities will negatively affect marketing for all agricultural sectors served by AMS.

Timing of Shutdown

Commodity grading and other fee based services operate year-round, but shutdown of operations will have a major impact on producers (farmers/ranchers) when agricultural commodities are ready to move into the marketplace.

AMS Start-Up Activities

Initial Communication

The AMS shutdown plan instructed employees to monitor the status of the government shutdown and agency operations via the Office of Personnel Management (www.opm.gov) and news sources. Following approval of an annual or partial budget, AMS employees will receive notification either from the OPM website, the news media or their immediate supervisors on when to return to work. *Employees should not wait to hear from their supervisor if news and other sources (e.g., OPM, USDA website) are reporting that the Federal government is open.*

General Start Up Procedures

All employees are responsible for taking necessary actions to restore the agency to a fully operational status. Key items to address include, but are not limited to:

- Turn off the out-of-office message in Outlook email
- Reset voice mail message
- Remove all signage indicating the office was closed due to a lapse of funding
- Resume use of transit benefits, if available where you work
- Resume use of government-issued mobile devices, including cell phones, tablets, and/or laptops for approved purposes
- Resume use of government fleet and travel cards for appropriate government use

Information Technology

AMS will coordinate with MRP IT Services to ensure that Information Technology (IT) Systems are available and operating with a high level of confidence to perform agency business operations. Upon restoration of funding for the agency:

- MRP IT Services will restore all AMS production IT systems, business tools and websites to their last known state in order to conduct official AMS business
- Employees should retrieve all IT equipment (laptops, cell phones, tablets, etc.) from their secured location in order to conduct official AMS business
- Employees will restart their computers and other IT devices to ensure all memory, temporary files and caches, are cleaned – giving the computer a fresh start
- Employees should connect computers and laptops to the IT network to ensure all systems are updated with the appropriate security patches and system updates. As a result of IT systems being offline, this process may take up to 4 hours to complete. Do not turn off computers while the updates are in progress

- MRP IT Services will work with USDA-OCIO-ITS to ensure technical issues submitted to the IT Service Center are addressed completely and in a timely manner
- MRP IT Services will provide ongoing monitoring to ensure availability and proper functionality of IT systems throughout the start-up and recovery process

Human Resources

- If an employee received unemployment compensation and is paid retroactively for time during furlough, the employee will be required to repay the unemployment compensation. For further guidance, please visit <https://www.nfc.usda.gov/>
- Timekeepers must follow up with supervisors and employees to determine if corrected timesheets need to be prepared for pay periods affected by the furlough