

Lapse in Appropriations Contingency Plan
Agricultural Marketing Service
December 2018

Purpose

Establish a plan of action to execute an orderly shutdown of Agricultural Marketing Service (AMS) operations in the event of a lapse in appropriations. This contingency plan will be implemented after direction from the U.S. Department of Agriculture (USDA).

Scope

The functions and activities described in this plan will be performed in accordance with all applicable statutes, regulations, policies and delegations of authority.

Authority

Operations Plan for Absence of Appropriations—Major Provisions

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

OMB Guidelines

The Office of Management and Budget (OMB) provides agencies with annual instructions on how to prepare for and operate during a funding gap in 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).

OMB requires shutdown plans to include:

- An estimate of the time to complete the shutdown, to the nearest half-day;
- The number of employees expected to be on-board (i.e., filled positions) before implementation of the plan; and
- The total number of employees to be “exempt” and “excepted” under the plan (i.e., not subject to furlough), because:
 - Their compensation is financed by a resource other than annual appropriations;
 - They are necessary to perform activities expressly authorized by law;
 - They are necessary to perform activities necessarily implied by law;
 - They are necessary to the discharge of the President’s constitutional duties and powers;
 - They are necessary to protect life and property.

Lapse in Appropriations Contingency Plan
Agricultural Marketing Service
December 2018

OMB Circular A-11, section 124.3, specifies that *OMB will monitor the status of congressional actions on appropriations bills and will notify agencies [e.g., Department of Agriculture] if shutdown plans are to be implemented.*

AMS Activities During a Lapse in Appropriations

AMS activities during a lapse in appropriations fall into four categories:

- Exempt activities – fully financed from available funds (resources other than annual appropriations, i.e. funded by user fees, reimbursements, or mandatory appropriations)
- Partially exempt activities – partially financed from available funds and partially financed by appropriated funds
- Excepted activities – meet the OMB criteria noted above
- Furloughed – no available funding source to continue the activity and does meet the requirements to be excepted

Exempt Activities

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

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

Partially Exempt Activities

Employees that are funded by multiple funding sources may be partially exempt to the extent their salaries are paid with non-appropriated 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 that 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 be maintained to support the Office of the Administrator and its associated Staff Offices will be maintained at a minimal level to support exempted and excepted activities and manage the orderly shutdown process. AMS administrative staff will provide basic services in procurement, contracting, labor and employee relations, human resources, personnel

**Lapse in Appropriations Contingency Plan
Agricultural Marketing Service
December 2018**

actions including death benefits, furlough and staffing actions, payroll, and worker's compensation. 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.

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. However, there are some employees that may need more than 4 hours to close down their activities. Dairy Program's Marketing Agreements and Orders staff will need one full day to coordinate with the Milk Market Administrators on their continuing operations.

Supervisors will make the necessary assignment of duties to ensure an orderly shutdown occurs. Contracting officers will notify contractors of their operating status

Lapse in Appropriations Contingency Plan
Agricultural Marketing Service
December 2018

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 or Department offices.

Specific activities to shutdown 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:**

Lapse in Appropriations Contingency Plan
Agricultural Marketing Service
December 2018

- 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

**Lapse in Appropriations Contingency Plan
Agricultural Marketing Service
December 2018**

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

2. Funded by Mandatory Appropriations

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

3. Funded by 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 | ✓ National Organic Program |
| ✓ Federal Seed | ✓ Packers and Stockyards Program |

**Lapse in Appropriations Contingency Plan
Agricultural Marketing Service
December 2018**

- ✓ Federal-State Marketing Improvement Program
- ✓ All compliance, standardization, methods development, and international monitoring activities conducted by the Federal Grain Inspection Service
- ✓ International Food Procurement
- ✓ Pesticide Data Program
- ✓ Shell Egg Surveillance
- ✓ Standardization

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

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/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.

**Lapse in Appropriations Contingency Plan
Agricultural Marketing Service
December 2018**

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), and the specialty crop and dairy industries (Marketing Agreements and Orders). 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:

**Lapse in Appropriations Contingency Plan
Agricultural Marketing Service
December 2018**

- 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