

Operations Bulletin OPS-GEN-130

Contingency Plan for Lapse in Appropriations

Issue Date: September 21, 2023

1. Issuing Organization. Operations Bulletin AD-GEN-001 was developed by the former Office of Administration and was issued April 8, 2011, and reissued on September 30, 2015. It was reviewed, revised, and reissued by the Office of the Managing Director as OPS-GEN-130 on September 21, 2023, and is due for review by September 20, 2028, or earlier if needed.
2. Purpose. Operations Bulletin OPS-GEN-130 provides guidance for the suspension of National Transportation Safety Board (NTSB) operations if, due to a lapse in appropriations, there is a government shutdown and an emergency furlough becomes necessary.

LAPSE PLAN SUMMARY OVERVIEW	
Estimated time (to the nearest half day) required to complete shutdown activities:	1/2 day
Total number of agency employees expected to be on board before implementation of the plan:	434
Total number of agency employees expected to be furloughed under the plan:	408
Total number of employees to be retained under the plan for each of the following categories:	
Compensation is financed by a resource other than annual appropriations:	0
Necessary to perform activities expressly authorized by law:	4 Presidentially appointed employees
Necessary to perform activities necessarily implied by law:	4 Presidentially appointed employees
Necessary to discharge the President’s constitutional duties and powers:	0
Necessary to protect life and property:	26

Brief summary of significant agency activities that will continue during a lapse:
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<p>Emergency-Essential Activities - Activities that protect life or property such that there is a reasonable likelihood that either or both would be compromised to a significant degree by the delay in the performance of an agency function. The Anti-Deficiency Act further provides that “emergencies involving the safety of human life or the protection of property” does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property. In close consultation with the MD, GC, and CFO, the chair may authorize, as emergency-essential activity, very specific investigative work, such as–</p>
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<p>(1) Launches to accidents and events required to protect and preserve evidence critical to determining risk of safety to human life.</p>

<p>(2) Limited activities which are required to preserve property related to accidents or events for which launches as identified in paragraph a, above, occur. Paragraph A in the Operations Bulletin defines Continuing Resolution.</p>

<p>(3) Ongoing investigation and report production activities required to prevent imminent risk to human life that would remain if the NTSB failed to act on an urgent basis.</p>

<p>Emergency-essential activities must be performed at the minimum level possible with a minimum number of staff.</p>

Brief summary of significant agency activities that will cease during a lapse:

<p>Prohibited Activities - Unless they are deemed necessary for the direct support of authorized emergency-essential activities, activities listed below are not permitted after available funds are exhausted. Prohibited activities include:</p>

<p>(1) Awarding of contracts, cooperative agreements, and small purchases.</p>
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<p>(2) Hiring of personnel or extending the appointment of personnel whose appointments have expired, if doing so would result in unauthorized obligation of funds during a lapse of appropriations.</p>
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<p>(3) Traveling, unless specifically exempted by the chair and/or MD (refer to paragraph 7 (B)(4)(iii)) in the Operations Bulletin.</p>
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<p>(4) Attending meetings, conferences, or seminars.</p>
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<p>(5) Employing new or continuing employment of experts and consultants if such actions would incur a financial obligation from funds for which there is no appropriation.</p>

<p>(6) Participating in training classes and other training activities.</p>

<p>(7) Using equipment or utilities not related to authorized activities if their use creates liabilities for the government beyond those existing on the date of the funding lapse.</p>
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<p>(8) Transporting or shipping articles (packages).</p>
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<p>(9) Authorizing overtime or compensatory time.</p>

3. Policy. It is NTSB policy that, during a lapse in appropriations, all required planning and implementation will proceed as specified in this bulletin and in applicable Office of Management and Budget (OMB) and Department of Justice (DOJ) guidance. This plan covers all NTSB employees (whether located in headquarters, regional offices, or approved telework and remote work locations), contractors, volunteers, and persons detailed to and from the NTSB. If a lapse in appropriations occurs, the NTSB can perform only emergency-essential activities or activities necessary for the orderly shutdown of routine, nonemergency operations. The NTSB will use no more than 4 hours to complete shutdown

activities. Emergency-essential activities to be continued during a no-funds emergency (government shutdown) include those NTSB functions necessary to ensure the safety of human life or the protection of property. There must be a reasonable likelihood that the safety of human life or the protection of property (or both) would be compromised in some significant degree by the delay in the performance of the agency function. The NTSB chair and the managing director (MD) will confer and approve the list of employees excepted from the furlough. In close consultation with the general counsel (GC) and the chief financial officer (CFO), the chair and the MD may authorize, as emergency-essential activities, very specific investigative work, such as the following:

- A. Launches to accidents and events required to protect and preserve evidence critical to determining risk of safety to human life.
 - B. Limited activities required to preserve property related to accidents or events for which launches identified in paragraph A, above, occur.
 - C. Ongoing investigation and report production activities required to prevent imminent risk to human life that would remain if the NTSB should fail to act on an urgent basis. Emergency-essential activities must be performed at the minimum level possible with a minimum number of staff.
 - D. The MD will maintain the total number of employees expected to be on-board before implementation of the plan and to be retained under the plan as described in attachment 1.
4. Cancellation. Operations Bulletin OPS-GEN-130 supersedes AD-GEN-001 dated September 30, 2015.
 5. References and Links.
 - A. NTSB Reauthorization Act of 2006, Title 49 *United States Code (U.S.C.)* §1113. Administrative, (c) Submission of certain copies to Congress
 - B. Office of Personnel Management (OPM) Guidance and Information on Furloughs
 - C. OMB Memorandum M-13-22, Planning for Agency Operations During a Lapse in Government Funding (September 17, 2013)
 - D. Appendix A-1 OMB Bulletin M-95-18 transmitting 8/16/95 Department of Justice opinion (August 22, 1995)
 - E. Appendix A-2 OMB Memorandum, Agency Operations in the Absence of Appropriations (October 5, 1990)
 - F. Appendix A-3 OMB Bulletin No. 80-14, Supplement No. 1, Agency Operations in the Absence of Appropriations (August 20, 1982)

- G. Appendix A-4 OMB Memorandum, Agency Operations in the Absence of Appropriations (November 17, 1981)
- H. Appendix A-5 OMB Bulletin 80-14, Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations (August 28, 1980)
- I. OMB Circular A-11 (2012), Section 124, Agency Operations in the Absence of Appropriations
- J. [Operations Bulletin CFO-GEN-013 Emergency Fund](#)
- K. [Operations Bulletin CFO-GEN-008 Administrative Control of Funds](#)
- L. Anti-Deficiency Act (ADA):

(1) Prohibitions on Expenditures.

The ADA prohibits all officers and employees of the federal government from entering into obligations in advance of appropriations and prohibits employing federal personnel except in emergencies, unless otherwise authorized by law. (See 31 U.S.C. § 1341 et. seq.)

(2) Prohibitions on accepting volunteer services. The ADA states, in part, the following:

An officer or employee of the United States Government or of the District of Columbia Government may not accept voluntary services for either Government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. As used in this section, the term "emergencies involving the safety of human life or the protection of property" does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property. (See 31 U.S.C. §1342.)

(3) Prohibitions on obligations in excess of apportionment/reapportionment:

The ADA prohibits making obligations or expenditures in excess of apportionment or reapportionment, or in excess of the amount permitted by agency regulations. (See 31 U.S.C. § 1517(a).)

a. Administrative:

An officer or employee who violates 31 U.S.C. §1341(a), 31 U.S.C. § 1342; 31 U.S.C. § 1517(a) "shall be subject to appropriate administrative discipline, including, when

circumstances warrant, suspension from duty without pay or removal from office." (See 31 U.S.C. §§ 1349(a), 1518.)

b. Penal:

An officer or employee who "knowingly and willfully" violates any of the three provisions cited above "shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both." (See 31 U.S.C. §§ 1350, 1519.)

M. NTSB Civil Law Opinion (See the NTSB Office of the General Counsel)

The permissible scope of government operations during a lapse in appropriations under which NTSB employees may be justified as emergency-essential personnel and required to perform duties (February 23, 2011).

6. Responsibilities.

A. The Office of the Chair is responsible for—

- (1) Ensuring that the agency develops and implements a plan that allows it to operate in a manner that conforms to OMB and DOJ guidance during a lapse in appropriations.
- (2) Ensuring that the agency notifies OMB of the NTSB's operational status and informs OMB of the number of employees excepted from furlough.

B. The Office of the Managing Director is responsible for approving the agency contingency plan for a shutdown, including—

- (1) Directing the institution of the emergency furlough of agency personnel, identifying personnel designated as being excepted from the furlough, identifying "shutdown" activities and actions necessary to suspend agency operations in accordance with OMB and DOJ guidance, specifying permissible activities for excepted employees during the shutdown, and planning for the restart of agency operations in an orderly manner when funds become available.
- (2) Communicating to Board members, office directors, and all employees the specifics of the shutdown plan and related activities to ensure consistency in implementing the shutdown process among offices, as appropriate.
- (3) Approving, in consultation with the chair, employees who will be excepted and recalled from the furlough.
- (4) Submitting to the director, Office of Human Capital Management and Training (HCT), the approved list of employees to be excepted from the furlough and, as needed, providing any updated lists of employees to be recalled to work during the furlough to support emergency and essential operations of the agency.

- (5) Providing continuous operation of the Response Operations Center.
 - (6) Notifying the General Services Administration (GSA) as necessary concerning shutdown of GSA-leased space.
 - (7) Directing HCT to issue furlough decision notices as appropriate.
 - (8) Communicating to all employees when they may return to duty once appropriations have been approved.
 - (9) Ensuring compliance with the procedures specified in this bulletin.
 - (10) Updating this bulletin according to the schedule, or earlier if needed.
- C. The Chief Financial Officer is responsible for–
- (1) Establishing contact with OMB for guidance and other shutdown activities.
 - (2) Completing and submitting information to OMB.
 - (3) Notifying OMB of the agency’s official shutdown.
 - (4) Advising the chair; MD; GC; HCT; and the Chief Information Officer (CIO) on the operating status of the NTSB.
 - (5) Notifying NTSB contractors about the lapse in appropriations and communicating when they may return to duty, once appropriations have been approved.
- D. The Office of General Counsel is responsible for–
- (1) Reviewing agency plans for compliance with DOJ decisions and OPM guidance.
 - (2) Establishing contact with DOJ and OMB to obtain any necessary guidance and decisions.
 - (3) Advising management officials of any legal implications with respect to suspending agency operations and activities during a period of lapsed appropriations.
 - (4) Advising management officials regarding permissible agency operations during a lapse in appropriations.
 - (5) Providing legal opinions as required.
- E. The Office of Human Capital Management and Training is responsible for–
- (1) Compiling the list of furloughed and excepted employees, providing the list and any updates to the security guards, and ensuring that NTSB property is protected.
 - (2) Establishing contact with other government agencies (such as OPM) to obtain guidance as necessary.
 - (3) Issuing furlough decision notices as directed by the MD.

- (4) Confirming that all employees received email notification of the furlough decision notice and have acknowledged receipt of this decision.
 - (5) Maintaining the agency's list of excepted employees approved by the MD.
 - (6) Providing standard language for supervisor notifications to employees.
- F. The Office of the Chief Information Officer is responsible for–
- (1) Providing continuous operation and maintaining stability of the information technology infrastructure to support communications for NTSB staff operating under the provisions of this bulletin. Specifically, this responsibility entails ensuring the continued availability and operation of the NTSB network, including specific applications such as email and wireless communication.
 - (2) Carrying out the measures necessary to ensure the security of agency records and property.
- G. The Office of Safety Recommendations and Communications is responsible for–
- (1) Creating and maintaining a public webpage with updated information on the operating status of the NTSB during the furlough period for employees and stakeholders to view.
 - (2) Communicating with external stakeholders and the public via social media (for example, Facebook, X, and similar sites) regarding the agency's status and other NTSB activities occurring during the lapse in appropriations.
- H. Office directors are responsible for–
- (1) Updating phone trees on a regular basis to ensure accurate contact information for employees (including work and personal cell phone numbers and email addresses).
 - (2) Initiating steps to verify contact information for all employees and ensuring that the Human Resources Division (HR) has the updated contact information.
 - (3) Proposing to the MD for approval the names of employees within their organizations who are (a) considered necessary for the orderly shutdown of activities and/or (b) to be excepted from the furlough.
 - (4) Reviewing all schedules and timelines of Board events (for example, hearings, reports, forums, and other activities) prior to the shutdown and communicating to external stakeholders about any change in the NTSB's operating status.
 - (5) Making recommendations to the MD on the recall of needed staff to work during the furlough.

(6) Maintaining communications with the MD and with the employees in their own office.

I. Supervisors are responsible for–

- (1) Informing employees (in writing or by telecommunication) that they may perform only those activities identified as emergency essential or necessary to operational shutdown activities.
- (2) Informing employees who will be furloughed that they may be recalled to duty to perform emergency-essential activities.
- (3) Informing employees involved in the orderly shutdown activities that they will be furloughed when these duties are completed.

J. Employees are responsible for–

- (1) Abiding by the provisions of this bulletin.
- (2) Ensuring that their supervisor has their updated contact information, including personal cell phone number and email address.
- (3) Acknowledging receipt of, and returning to HR, their furlough decision notice.
- (4) Following the instructions provided by the agency regarding shutdown activities.
- (5) Returning to duty status to complete emergency-essential work as directed by the applicable office director or deputy director, if determined to be required by the MD.
- (6) Maintaining awareness of the agency's operating status.

7. Procedures.

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

- (1) The CFO will provide information pertaining to continuing resolutions, as necessary, to ensure the orderly execution of program funds.
- (2) The MD will request from office directors a proposed list of excepted employees for their office in the event of a lapse in appropriations. Directors will provide the list using the criteria and procedures provided in this bulletin.
- (3) The MD will forward an approved list to office directors and HCT if a lapse in appropriations appears likely.

B. Actions to be taken if a lapse in appropriations occurs.

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

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

- (2) Non-excepted employees who are scheduled to telework on their next scheduled workday may perform these shutdown activities from their telework location, if an existing telework agreement is in place. In addition, with supervisory approval, other employees may be allowed to conduct shutdown activities from a remote location, even without an existing telework agreement, if the nature of the employees' shutdown activities (for example, receiving and acknowledging receipt of an electronic furlough notice and adjusting voicemail and email to reflect current work status) are minimal and the tasks can generally be completed in approximately 15 minutes. All other non-excepted employees will be expected to perform orderly shutdown activities on their next scheduled workday.
- (3) Shutdown activities also include any activities to facilitate efficient reactivation of operations when funds become available. Examples of shutdown activities include—
 - a. Canceling meetings, hearings, and other previously arranged business and notifying parties such as other federal agencies, state governments, and private entities involved in NTSB matters of the cessation of normal business.
 - b. Documenting the status of cases and projects so they can be resumed, transferred, or otherwise appropriately handled once the funding situation has been determined.
 - c. Planning, controlling, and maintaining orderliness only through the actual phasedown of operations.
 - d. Performing only necessary fiscal and accounting tasks required to maintain accountability and reporting obligations and expenditures of all funds.
 - e. Performing only those tasks necessary to protect classified information, including listing all papers to be accorded classified status and securing all appropriate files and automatic data processing information.
 - f. Performing only those requisite administrative functions required to process the payroll for the pay period through the expiration of the previous continuing resolution.
 - g. Conducting other necessary functions that contribute directly to the orderly cessation of nonemergency/essential NTSB activities, protect life, and/or safeguard evidence.
- (4) Employees excepted from an emergency furlough

- a. Only personnel designated as being excepted from any emergency furlough should report to work during agency shutdowns. Personnel excepted from a furlough include—
 - i. Individuals appointed by the president, with or without Senate confirmation (only NTSB Board members; not Schedule C employees).
 - ii. Employees designated to perform emergency-essential duties as determined by the chair and the MD in accordance with DOJ and OMB guidance listed in Section 5 of this bulletin. In addition, employees who are approved to be recalled to duty will be considered excepted employees.
 - iii. Employees designated to perform assignments for a short time (no more than 4 hours) related to the orderly shutdown of agency operations (for example, to issue furlough notices to employees or to secure equipment or evidence).

C. Instructions for shutdown during a lapse in funding.

- (1) The MD notifies agency personnel when appropriations have lapsed and the NTSB contingency plan is activated.
- (2) All NTSB activities not approved as emergency essential or as shutdown activities must cease when funds available for obligation are exhausted (no funds). However, no actions under this contingency plan are to be initiated without notification from the chair or MD that the plan is to be put into effect. The NTSB may incur obligations for emergency-essential and shutdown activities once available funds have been exhausted; however, only obligations are incurred, and no funds are disbursed for these obligations without the enactment of an appropriations act or continuing resolution.
- (3) Employees excepted from the furlough will perform duties that are required because the failure to perform those functions would result in an imminent threat to the safety of human life or the protection of property or are necessary for an orderly shutdown of agency function.
- (4) Office directors must submit to the MD for approval a list of employees proposed to be excepted from the furlough by name and job title and, as needed during the furlough, a list of employees that must be recalled to work. The MD will send approved lists to the office directors and the director of HCT.
- (5) The MD will authorize HR to transmit a “Furlough Decision Notice Due to Lapse of Appropriations” (Title 5 *Code of Federal Regulations* [CFR] Part 752). (See Attachment 2.)

(6) Notices.

- a. HCT must prepare furlough notices to all employees. A notice must be distributed to each employee not designated as excepted personnel.
- b. Employees must acknowledge receipt of the notice in writing. Supervisors will activate their office phone tree system to confirm receipt of the furlough decision notice by employees.
- c. This notice should be issued prior to furlough, but when this is not feasible, any reasonable notice (telecommunication, written, or oral) is permissible. If prior written notice is not provided, the NTSB must provide the employee with a written decision notice at the earliest possible time following the furlough. NTSB employees on detail may be furloughed depending on the terms of the detail agreement and which organization is paying the cost of the detail.

(7) Employees from other organizations who are detailed to the NTSB must return to their duty station in the event of an NTSB shutdown.

(8) Temporary employees will be furloughed in the same manner as permanent employees.

(9) Travel.

- (a) Supervisors must contact any employee on travel status and advise them to return to the duty station immediately, unless the NTSB determines that it is in the best interest of the federal government for the employee to remain in travel status and the employee volunteers to be furloughed at the travel site, without pay or per diem. The agency will reimburse travel costs after appropriations are enacted and are available for that purpose. Therefore, it is necessary that supervisors know the location of, and contact information for, their employees prior to shutdown. Only in extenuating circumstances will retention of an employee in travel status be considered to be in the best interest of the government.
- (b) In consultation with the GC, CFO, and the appropriate office director, the MD will consider the likely duration of the funding lapse and the cost of returning the employee to the duty station and then resuming the travel later, if necessary, as opposed to retaining the employee in a volunteer travel status without pay or per diem until further funding is appropriated.
- (c) Employees must use their government travel card if they are performing emergency-essential activities for the NTSB. They will be personally responsible for paying any expenses they incur since funds will not be available to reimburse them during the shutdown period. Once funding becomes available, they may submit a request for reimbursement of their

travel expenses. (For guidance on travel cards, see Operation Bulletin TVL-GEN-003, Travel Cards Individually Billed Account (IBA).)

(d) Employees on travel status who are excepted employees may be retained on pay status if the travel they are performing meets the requirements of emergency-essential activities. However, they will not receive pay until an appropriation has been passed.

(11) Supervisors will inform employees (in writing or by telecommunication) that they may perform only those activities identified as emergency essential or necessary to operational shutdown activities and that they will be furloughed when these duties are completed. Supervisors must also inform employees being furloughed that they may be recalled to duty to perform emergency-essential activities.

D. Prohibited Activities. Unless they are deemed necessary for the direct support of authorized emergency-essential activities, activities listed below are not permitted after available funds are exhausted. Prohibited activities include, but are not limited to—

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

E. Resuming Orderly Operations.

- (1) Once government-wide or NTSB-specific funding is approved, the MD will communicate instructions for employees to return to work on their next regular duty day via the automated notification system and NTSB public website.

- (2) The agency will make reasonable efforts to reach employees regarding directions to return to work. Employees, however, have an obligation to stay apprised of the news and make diligent efforts to remain informed of the government's operating status.
 - (3) Employees who are unable to return to work at the end of the furlough may request approval from their supervisors for unscheduled leave.
 - (4) After a recall direction has been issued, employees who do not return to work or request approval for leave will be considered absent without leave (AWOL).
 - (5) The Acquisition Division will communicate with the NTSB contractors who were directed to suspend performance that funding has been approved and will order those contractors to resume work.
 - (6) The CIO will ensure that all systems and communications vehicles are fully operational.
8. External Reporting Requirements. Use Attachment 1, Contingency Plan for Lapse in Appropriation Total Number of Agency Employees, to report to OMB the numbers of NTSB personnel, as required.
9. Definitions.
- A. **Continuing resolution** - a type of appropriations legislation used by the United States Congress to fund government agencies if a formal appropriations bill has not been signed into law by the end of the congressional fiscal year. The legislation provides funding for existing federal programs at current or reduced levels.
 - B. **Excepted employee/personnel** - an employee(s) excepted from a furlough by law because they are (1) performing emergency work involving the safety of human life or the protection of property, (2) involved in the orderly suspension of agency operations, or (3) performing other functions exempted from the furlough. (See paragraph 7(B)(4)).

Note: An excepted employee is not to be confused with an employee in the excepted service.
 - C. **Emergency-Essential Activities** - activities that protect life or property such that there is reasonable likelihood that either or both would be compromised to significant degree by the delay in the performance of an agency function. The Anti-Deficiency Act further provides that "emergencies involving the safety of human life or the protection of property" does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property. In close consultation with the MD, GC, and CFO, the chair may authorize, as emergency-essential activity, very specific investigative work, such as—

- (1) Launches to accidents and events required to protect and preserve evidence critical to determining risk of safety to human life.
 - (2) Limited activities which are required to preserve property related to accidents or events for which launches as identified in paragraph a, above, occur.
 - (3) Ongoing investigation and report production activities required to prevent imminent risk to human life that would remain if the NTSB failed to act on an urgent basis. Emergency-essential activities must be performed at the minimum level possible with a minimum number of staff.
- D. **Furlough** - the placing of an employee in a temporary nonduty, non-pay status because of the lack of work or funds or for other non-disciplinary reasons. A furloughed employee may not be placed in leave status.
- E. **Shutdown** - a type of furlough in which the agency no longer has the necessary funds to operate and, therefore, must shut down those activities that are not excepted by OMB.

10. Attachments.

- A. Attachment 1, Contingency Plan for Lapse in Appropriations Total Number of Agency Employees
- B. Attachment 2, Sample Planning and Implementation Checklist for an Orderly Shutdown
- C. Attachment 3, Sample Furlough Decision Notice Due to Lapse of Appropriations (5 CFR 752)

Attachment 1

**National Transportation Safety Board
Contingency Plan for Lapse in Appropriations
Total Number of Agency Employees**

Date: _____

Total number of NTSB employees expected to be on board before implementation of this plan: _____

Total number of NTSB employees who are deemed necessary to perform essential activities/duties: _____ (Employees fall under one of the categories listed below.)

- 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.

The agency's legal basis for each of its determinations to retain categories of employees is provided under the policy statement of Operations Bulletin OPS-GEN-130, Contingency Plan for Lapse in Appropriations, on page 1.

Attachment 2**SAMPLE FURLOUGH DECISION NOTICE DUE TO LAPSE IN APPROPRIATIONS**
(5 CFR PART 752)

The following notice would be used for a government shutdown furlough, in which the agency no longer has the necessary funds to operate and must curtail those activities not excepted by OMB standards. In such instances, there is no advance written notice proposing the action. (See 5 CFR 752.404(d) and 359.806(a).)

This message is being sent on behalf of Managing Director [insert name of the managing director].

NOTICE OF FURLOUGH DECISION

Annual funding for the government expired at 11:59 p.m. on XXX **[enter date]**. In the absence of either a fiscal year (FY) XXXX **[enter year]** appropriation, or a continuing resolution funding the National Transportation Safety Board (NTSB), no new financial obligations may be incurred by the NTSB, except for those related to the orderly suspension of agency operations or performance of excepted activities or services in direct response to "emergencies involving the safety of human life or the protection of property," as defined in the OMB [Memorandum for Heads of Executive Departments and Agencies, dated November 17, 1981](#).

Because you are not engaged in one of the excepted activities, you have been placed in a furlough status effective XXX **[enter date]**. This furlough (that is, nonpay, nonwork status) is not expected to exceed 30 calendar days and may end at any time.

During the furlough, follow the Office of Personnel Management (OPM) web site Current Status (opm.gov) and listen to public broadcasts for the latest information regarding government operating status and directions on when to return to work once an appropriation or continuing resolution is signed. You are expected to report for duty on your next regularly scheduled workday after an FY XXXX **[enter year]** appropriation or a continuing resolution is approved.

The agency is taking this furlough action because of an immediate lapse in appropriations creating an emergency requiring curtailment of the agency's activities; therefore, no advance notification and opportunity to answer is possible. The customary 30 calendar-day advance notice period and opportunity to answer are suspended under the provisions of [5 CFR 752.404\(d\)\(2\)](#). The 30 calendar-day advance notice otherwise required by [5 CFR 359.806\(a\)](#) for Senior Executive Service (SES) career appointees (other than reemployed annuitants) may be shortened or waived.

During the furlough period, you will be in a nonduty, nonpay status and you may not work at your workplace or other alternative worksite unless and until recalled. You will not be permitted to serve as an unpaid volunteer. Any paid leave (annual, sick, court, or other) previously approved for use during the furlough period is cancelled. Any official travel, unless authorized by the managing director or chair, is cancelled and employees should return home as instructed by their supervisor.

Appeal Rights—Merit Systems Protection Board

The following employees may appeal this furlough notice Merit Systems Protection Board (MSPB):

- Employees who have completed a probationary or trial period or 1 year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection Board (MSPB).
- Employees in the excepted service who have veteran's preference may appeal to MSPB if they have completed 1 year of current continuous service in the same or similar position as the one they now hold.
- Employees in the excepted service who do not have veteran's preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to MSPB if they have completed 2 years of current continuous service in the same or similar position in an Executive agency under other than a temporary appointment limited to 2 years or less.
- Career SES appointees (except reemployed annuitants) who believe the requirements of 5 *CFR* part 359, subpart H, or the agency's procedures have not been correctly applied may also appeal to MSPB. Career SES appointees may inspect the regulations and records pertinent to this action at the following location: **[insert name of the point of HCT point of contact, as appropriate]**.

If you have the right of appeal to MSPB and wish to appeal this action to the MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough. If you wish to file an appeal, you may obtain information about the appeals process and a copy of the appeals form from the MSPB website at <http://www.mspb.gov/appeals/appeals.htm>. MSPB requires an appeal to be filed with the MSPB regional or field office serving the area where your duty station was located when the action was taken. Please refer to the list of MSPB regional or field offices included on the MSPB website for the appropriate office applicable to you. MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing.

If you cannot access the internet pages or have questions regarding how to direct an appeal to the appropriate MSPB office, you may **contact [insert name of the point of HCT point of contact, as appropriate]** to obtain a copy of the MSPB regulations and a copy of the MSPB appeal form.

Discrimination Claims—Equal Employment Opportunity Commission (EEOC)

If you wish to raise an allegation of discrimination regarding this furlough decision, you may either appeal to the MSPB, as described above, **or** file a discrimination complaint under the provisions of the NTSB discrimination complaint procedures that flow from the EEOC regulations. An appeal to the MSPB will not be processed concurrently with a discrimination complaint filed with the NTSB.

To file a discrimination complaint, you must first consult an Equal Employment Opportunity (EEO) Counselor within 45 calendar days after the effective date of this furlough decision. You may contact **[insert name of the Equal Employment Opportunity, Diversity, and Inclusion point of contact, as appropriate]** to initiate EEO counseling. If, after EEO counseling, you decide to file a formal discrimination complaint, you still retain the right to appeal to the MSPB. You must file the appeal with the MSPB either (1) within 30 calendar days after you receive the NTSB's resolution or final decision on your discrimination complaint or (2) at any time after 120 calendar days of filing your discrimination complaint if the NTSB has neither resolved your discrimination complaint nor issued a final decision.

Grievance Procedures for Bargaining Unit Employees

Bargaining unit employees may grieve this furlough action in accordance with Article 25 of the Collective Bargaining Agreement (CBA) between the NTSB and the American Federation of Government Employees (AFGE) Local 2211. All grievances must be in writing, signed, and submitted to me as the NTSB managing director, within 14 calendar days from the date of receipt of this furlough decision. To obtain further information on filing a grievance under the negotiated grievance procedure, contact **[name of exclusive union representative]**.

Bargaining unit employees may (1) grieve this action in accordance with Article 25 of the CBA, (2) appeal this action to the MSPB, in accordance with the procedures outlined above, **or** (3) file a complaint of discrimination with the NTSB, under the procedures of the EEOC outlined above, but employees must choose **only one of these options**. Filing a grievance will not extend the time limit for filing an appeal to the MSPB.

For additional information about filing for unemployment insurance and to stay up to date with the latest information regarding the furlough, please refer to the NTSB website at **[insert web address]**.

We recognize the difficult financial implications of any furlough, no matter how limited its length. If you have questions, **contact [insert name of the point of HCT point of contact, as appropriate]**. Please remember that the agency has an Employee Assistance Program (EAP). The EAP is free and confidential for all NTSB employees. You may contact the EAP at any time, day or night, by calling **[insert appropriate phone number]**.

Attachment 3

PLANNING & IMPLEMENTATION

SAMPLE CHECKLIST FOR AN ORDERLY SHUTDOWN

The checklist below is activated 2 weeks prior to the potential shutdown.

RESPONSIBLE OFFICE	PLANNING FOR SHUTDOWN	PLANNING DEADLINE	IMPLEMENTATION OF SHUTDOWN	ACTION DEADLINE
MD	Notifies office directors of shutdown actions.		Sends email notification to office directors of shutdown actions.	
OFFICE DIRECTORS	Update contact info including personal email address, phone number, and COOP.		Use contact info to maintain contact with employees during furlough.	
OFFICE DIRECTORS	Request list from division chiefs of critical activities with contact information for the subsequent 1-2 weeks requiring follow-up.		Collect list from Division Chiefs of critical activities for the subsequent 1-2 weeks requiring follow-up	
OFFICE DIRECTORS	Identify travelers to provide instructions regarding impact of furlough while on travel.		Notify travelers to return home by 12:00 midnight on month/day/year.	
CIO	Determines network availability during shutdown.		Ensures network availability to all employees during shutdown if that determination is made.	
HCT/MD	HCT prepares general employee notice regarding agency closure.		MD notifies employees of shutdown.	
SRC	Prepares press release notifying public of agency closure.		Sends press release notifying public of agency closure.	
CFO	Prepares contingency plans per OMB guidance to office directors on suspending purchases for		Issues guidance to office directors on pending expenses.	

	travel, training, meetings, and pending payments.			
HCT	Petitions MSPB for a contingency notice of furlough and an expedited and consolidated ruling on the ability to furlough ALJs.		Takes appropriate action as directed by MSPB on ALJs.	
HCT	Notifies Union of the potential shutdown and bargain Impact and Implementation.		Issues notice to Union on furlough status.	
HCT	Prepares notification to selectees with tentative job offers and permanent job offers regarding the CR and the impact on their job offers.		Sends notification to selectees with tentative job offers and permanent job offers regarding the CR and the impact on their job offers.	
HCT	Ensures accurate tracking of onboard employees and details.		Provides accurate onboard count to CFO.	
HCT	Prepares individual furlough notices to employees.		Issues furlough notices to employees.	
CFO (ACQUISITION)	Prepares notification to contractors about possible shutdown		Sends notification to contractors about possible shutdown.	
CFO (ACQUISITION)	Prepares notices to JBG and GW of possible shutdown and its impact.		Sends notices to JBG and GW of possible shutdown and its impact.	
MD	Arranges for mail to be held during shutdown		Informs carriers of shutdown to hold mail and deliveries during shutdown.	
MD	Prepares notices of possible shutdown to renters of the Boardroom and high-bay facilities.		Sends notices of possible shutdown to renters of the Boardroom and high-bay facilities.	
HCT/MD	HCT prepares notification on resumption of work.		MD notifies employees to return to work.	