



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Administration

MEMORANDUM

TO: Office of Management and Budget

FROM: Anthony C. Thompson
Executive Director *Anthony C. Thompson*

DATE: September 24, 2021

SUBJECT: CFTC Plan for Lapse in Appropriations

Pursuant to Section 124, Agency Operations in the Absence of Appropriations, OMB Circular A-11 (2021), the Commodity Futures Trading Commission (CFTC) is submitting its plan for an orderly shutdown in the event of a lapse of appropriations.

In the event that a lapse of appropriations occurs, the CFTC will severely curtail its operations until additional appropriations are enacted into law, and expects that the vast majority of the agency's operations will cease. However, some operations will continue pursuant to exceptions set forth in the Antideficiency Act and elaborated by opinions from the Department of Justice, Office of Legal Counsel (OLC), and guidance from the Office of Management and Budget (OMB). In general, the agency may continue "excepted" functions that meet any of the following criteria:

- Those that have a continuing source of funding (such as the CFTC's Customer Protection Fund);
- Those for which a statute or other legal requirement expressly authorizes an agency to obligate funds in advance of appropriations;
- Those that an agency must continue in the absence of appropriations because their continuation is "necessarily implied" from the authorized continuation of other activities;
- Those that are necessary to preserve the safety of life or the protection of property; or
- Those that are necessary for the discharge of the President's constitutional duties.

Most of the CFTC's excepted functions are those that are deemed necessary for the protection of property, including the markets the CFTC regulates:

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

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

Consistent with this, we have identified employees who are necessary to perform these excepted functions during a lapse in appropriations:

- Assuming the plan is implemented on or after September 24, 2021, the CFTC has approximately 674 employees on board. There are an additional 14 employees in the Whistleblower Office (WBO) and Market Participants Division (MPD)/Office of Customer Education and Outreach (OCEO) who are funded by resources other than annual appropriations.
- Of the 674 employees, 36 have been identified as excepted from the restrictions of the Antideficiency Act, because their work conforms to one or more of the excepted functions. This represents 5.0% of the CFTC's staff. The justification for each employee's inclusion on the excepted list is set forth in the attached table.
- The 14 employees in the WBO and MPD who are exempt from furlough because their operations are funded through a separate funding source unrelated to the CFTC's annual appropriation.
- The Commissioners are PAS appointees (Presidential appointees with Senate confirmation) and are exempt from furlough. Their respective staffs, however, are subject to furlough under the requirements of the Antideficiency Act.
- With limited exceptions, all employees who are not identified as excepted would require no more than four hours to conduct an orderly shutdown of agency operations.
- Of the 674 CFTC employees noted, there are no employees that are excepted because they are engaged in military, law enforcement, or direct provision of health care activities or because their compensation is financed by a resource other than annual appropriations.

The limited contingent of excepted employees has been identified to ensure, to the extent practicable, the oversight of the derivatives markets and to police those markets to ensure they are free of fraud and manipulation. In the event that circumstances change such that an activity not initially identified as an excepted function may have become so, the excepted employees will be responsible for notifying appropriate agency officials, who then will make a determination as to whether the activity constitutes an excepted function and whether additional employees must be recalled from furlough to perform the function.

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

1. A copy of the CFTC's Lapse Procedure, dated September 2021.
2. A chart containing a list of the 36 employees who have been determined to be excepted for purposes of the Antideficiency Act.
3. A three-page summary of which CFTC functions will continue in the event of a lapse of appropriations, and which functions will cease during such a lapse.

Please feel free to contact me at (202) 418-5697 if you have any questions related to this matter.

CFTC Procedure

Date: September 2021

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

Contact: Anthony C. Thompson
 KerriLaine L. Prunella

| Lapse Plan Summary Overview | |
|--|-----|
| Estimated time (to nearest half day) required to complete shutdown activities: | 0.5 |
| Total number of agency employees expected to be on board before implementation of the plan: | 674 |
| 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: | 14 |
| Necessary to perform activities expressly authorized by law: | |
| Necessary to perform activities necessarily implied by law: | |
| Necessary to the discharge of the President’s constitutional duties and powers: | |
| Necessary to protect life and property: | 36 |
| Brief summary of significant agency activities that will continue during a lapse: | |
| The CFTC will perform work that will enable the commodities, futures and swaps markets to continue to operate and that will enable trading on those markets to continue. | |
| Brief summary of significant agency activities that will cease during a lapse: | |
| The CFTC will cease the vast bulk of its operations, including but not limited to most functions of the Divisions of Enforcement, Market Oversight, Clearing and Risk and Swap Dealers and Intermediary Oversight. Reports and work related to rulemakings and other responsibilities mandated by Dodd-Frank Wall Street Reform and Consumer Protection Act will also cease. | |

Purpose

This procedure outlines the process the Commodity Futures Trading Commission (CFTC) will follow to shut down operations in the event of a lapse in appropriations and until additional appropriations are enacted into law. Under the Antideficiency Act (31 U.S.C. § 1341 *et seq.*),

officers and employees of the federal government cannot, among other things, enter into obligations in advance of appropriations or employ federal personnel except for excepted functions, or to accomplish the orderly suspension of agency operations. If no funds are available, the agency must initiate the orderly shutdown of agency activities not considered excepted functions.

Excepted Employees

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

Employees Exempt from Furlough During a Lapse in Appropriations

- HR will notify Presidential appointees that they will continue to work but their staff members will be subject to furlough unless they are needed to perform excepted functions.
- HR will notify employees of the WBO and certain employees in MPD that they will continue to work because they have an alternative funding source.

Employees Subject to Furlough During a Lapse in Appropriations

- HR will provide supervisors with furlough notices to be sent to all employees (including student volunteers, unpaid consultants, and individuals on Intergovernmental Personnel Act agreements (as applicable)) other than those described above as not being subject to furlough during a lapse in appropriations.
- Within the first three (3) hours after employees report to work¹ at his/her regularly scheduled tour of duty start time on the first business day following the lapse in appropriations, supervisors will send a furlough notice to all employees under their supervision other than those described above as not being subject to furlough during a lapse in appropriations.
- Employees (except those already on preapproved leave or an alternative work schedule) must report to work on the first business day following the initiation of a shutdown. Within the first three (3) hours after employees report to work at his/her regularly scheduled tour of duty

¹ Where applicable “report to work” includes in the office or telework status.

start time, employees will receive a furlough notice and must perform the duties necessary for the orderly shutdown of Commission operations.

- Supervisors must notify employees that travel is cancelled unless it is part of an excepted function. Any employee on travel that is not part of an excepted function must immediately return to his/her duty station
- Employees MAY NOT volunteer to work for the CFTC without pay. This is a violation of Antideficiency Act and carries strong personal sanctions against the individual. Pursuant to 31 U.S.C. § 1350 any officer or employee who “knowingly and willfully violates the Antideficiency Act shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both.” An individual violating the Antideficiency Act may also “be subject to appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office.” 31 U.S.C. § 1349(a).
- In the event of a shutdown, all paid leave must be cancelled. Accordingly, any employee who has received preapproval for paid leave during the shutdown period will be furloughed, unless such employee is considered “excepted” as outlined above. Any employee who is informed that he/she is excepted must report to work.

Contractors

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

Notification to OMB

The Executive Director/Chief Administrative Officer is responsible for notifying OMB immediately when shutdown activities are being initiated, in compliance with Section 124 of OMB Circular A-11.

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

- Employees who are not excepted must not check email or use voice capabilities or conduct any work. Employees who are not excepted will be instructed to power off and securely store all CFTC provided equipment prior to the lapse in appropriations, and will be informed that they cannot access any such devices while on furlough. This includes, but is not limited to, CFTC provided laptops, smartphones, or tablets.
- Employees who are not excepted must set an autoreply for his/her email address and for public email addresses. Employees who are not excepted must record out-of-office messages on all public phones and on his/her phone.

- All employees who are not excepted must cancel meetings, hearings, and other previously arranged business and notify appropriate parties of the cessation of normal agency business due to a lapse in appropriations.
- Employees who are not excepted should document the status of cases and projects so they can be resumed, transferred, or otherwise appropriately handled when the funding situation is resolved.
- Employees who are not excepted must take appropriate steps to safeguard and secure all records and property to ensure protection of any classified or sensitive information.
- Employees who are not excepted must complete shutdown activities within three (3) hours after the employee reports to work at his/her regularly scheduled tour of duty start time on the first business day following the lapse in appropriations.

Notification to Public and Staff

- The Office of Public Affairs (OPA) will notify the public of closure and reopening of CFTC offices through the CFTC Website. The website will remain operational because it has already been fully funded prior to the lapse in appropriations. However, the website will generally not be updated or maintained during a lapse in appropriations.
- The Logistics teams within the Business Operations Branch will ensure that the main CFTC information line (1-866-406-8550) and the headquarters and regional main phone lines contain current status information.
- Employees are responsible for checking the CFTC information line for information about the reopening of the agency after Congress appropriates funds.
- Employees are expected to return to work on their next regularly scheduled work day, unless on preapproved leave, following enactment of appropriations legislation.

CFTC Excepted Staff List

| Office | Numbering by Division/Office | Position | Location | Justification |
|--------|------------------------------|--------------------------------|----------|--|
| COMM | 1 | Chief of Staff | DC | Advise Commissioner on matters that the Commission may need to take up during the lapse in appropriations. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). |
| COMM | 2 | Commissioner Berkovitz's Staff | DC | Advise Commissioner on matters that the Commission may need to take up during the lapse in appropriations. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). |
| COMM | 3 | Commissioner Stump's Staff | DC | Advise Commissioner on matters that the Commission may need to take up during the lapse in appropriations. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). |

| Office | Numbering by Division/Office | Position | Location | Justification |
|--------|------------------------------|-----------------|----------|---|
| OLIA | 1 | Acting Director | DC | <p>This employee will monitor and respond fully to all legislative inquiries. This employee will also advise whether additional resources are necessary to respond to legislative inquiries. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). To the extent a nomination or appointment is pending during a lapse in appropriations, this employee (and others, to the extent necessary) will perform the minimum necessary obligational authority for the President to carry out his nomination and appointment power. Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations, 5 OLC Op. 1, 5-6 (1981).</p> |
| OIA | 1 | Director | DC | <p>This employee will monitor international financial markets, maintain communication with other participants in those markets, and coordinate CFTC activity with respect to other international participants. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). This employee will also perform the minimum necessary obligational authority for the President to carry out his foreign affairs power. Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations, 5 OLC Op. 1, 5-6 (1981).</p> |

| Office | Numbering by Division/Office | Position | Location | Justification |
|--------|------------------------------|--------------------|----------|--|
| OIA | 2 | Associate Director | DC | <p>This employee will monitor international financial markets, maintain communication with other participants in those markets, and coordinate CFTC activity with respect to other international participants. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). This employee will also perform the minimum necessary obligational authority for the President to carry out his foreign affairs power. Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations, 5 OLC Op. 1, 5-6 (1981).</p> |
| OPA | 1 | Acting Director | DC | <p>This employee will monitor and respond to all press inquiries. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p> |

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|--------|------------------------------|------------------------|----------|---|
| OCE | 1 | Acting Chief Economist | DC | This employee will be performing economic analysis. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). |
| OIG | 1 | Inspector General | DC | This employee will monitor and respond to the hotline for allegations of waste, fraud, and abuse. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). |
| DMO | 1 | Director | DC | This employee will oversee all DMO activities. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). |

| Office | Numbering by Division/Office | Position | Location | Justification |
|--------|------------------------------|--|----------|---|
| DMO | 2 | Associate Deputy Director, Section One (System Safeguard Examinations) | DC | This employee will oversee market system safeguards to detect/address major market disruption related to enterprise risk management, information security, capacity planning, systems operations, business continuity, disaster recovery, physical security and environmental controls. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). |
| DMO | 3 | Deputy Director, Market Intelligence Branch | DC | This employee will analyze and communicate current and emerging derivatives market dynamics, developments, and trends to assist the Commission and the public in making informed decisions during a lapse in appropriations. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). |

| Office | Numbering by Division/Office | Position | Location | Justification |
|--------|------------------------------|------------------------|----------|---|
| LD | 1 | Acting General Counsel | DC | <p>This employee will provide legal advice and support to the excepted activities of presidential appointees and excepted staff. This employee's presence is incidental but necessary to address the scope of allowable excepted functions that can be taken by the agency during a lapse in appropriations, including those excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). This employee will also oversee and coordinate filings in the agencies appellate court matters, which address an imminent threat to the protection of property implicated in those open and active appellate litigation cases. In addition, this employee will determine when delaying appellate matters would threaten life or property to determine when to recommend additional or different excepted personnel.</p> |
| DOE | 1 | Acting Director | DC | <p>This employee will oversee and coordinate filings in approximately 100 district court matters, which address an imminent threat to the protection of property implicated in those open and active litigation cases. In addition, this employee will determine when delaying matters would threaten life or property to determine when to recommend additional or different excepted personnel. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p> |

| Office | Numbering by Division/Office | Position | Location | Justification |
|--------|------------------------------|--|----------|--|
| DOE | 2 | Chief Counsel | DC | This employee will track electronic filings, analyze and respond to all filings made, participate in hearings on substantive matters that cannot be postponed due to risk to property if not pursued timely, and respond to emergency actions that arise. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). |
| DOE | 3 | Deputy Director, New York Regional Office | NY | This employee will track electronic filings, analyze and respond to all filings made, participate in hearings on substantive matters that cannot be postponed due to risk to property if not pursued timely, and respond to emergency actions that arise. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). |
| DOE | 4 | Deputy Director, Kansas City Regional Office | KC | This employee will track electronic filings, analyze and respond to all filings made, participate in hearings on substantive matters that cannot be postponed due to risk to property if not pursued timely, and respond to emergency actions that arise. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). |

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| DOE | 5 | Deputy Director, Chicago Regional Office | CH | This employee will track electronic filings, analyze and respond to all filings made, participate in hearings on substantive matters that cannot be postponed due to risk to property if not pursued timely, and respond to emergency actions that arise. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). |
| DOE | 6 | Deputy Director | DC | This employee oversees and coordinates the functions of the Division of Enforcement. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion |
| DOE | 7 | Deputy Director | DC | This employee oversees and coordinates the functions of the Division of Enforcement. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion |

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|--------|------------------------------|--|----------|---|
| DOE | 8 | Supervisory Surveillance Analyst | DC | <p>This employee will oversee the overall market surveillance program to examine markets for misconduct detrimental to the Commission's mission of protecting market integrity which is essential to the national economy. This employee will be performing emergency or excepted functions, including those that will address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p> |
| DCR | 1 | Director | DC | <p>This employee will be responsible for overseeing all DCR activities. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p> |
| DCR | 2 | Acting Deputy Director for Risk Surveillance | DC | <p>This employee will be responsible for overseeing, from a broad perspective, risk surveillance activities. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p> |

| Office | Numbering by Division/Office | Position | Location | Justification |
|--------|------------------------------|--|----------|---|
| DCR | 3 | Deputy Director for Examinations/ Associate Director | CH | <p>This employee will be responsible for overseeing, from a broad perspective, DCR surveillance activities and examinations, in particular those that have been designated as systematically important. She will track electronic filings made under 39.11 and 39.19, analyze and respond to filings made in substantive matters. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p> |
| DCR | 4 | Associate Director | CH | <p>This employee will be responsible for overseeing, from a broad perspective, risk surveillance activities. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p> |

| Office | Numbering by Division/Office | Position | Location | Justification |
|--------|------------------------------|--------------------------------------|----------|---|
| DCR | 5 | Associate Director | CH | This employee will be responsible for overseeing, from a broad perspective, risk surveillance activities. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). |
| MPD | 1 | Acting Director | DC | This employee will be responsible for overseeing all MPD activities. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). |
| MPD | 2 | Deputy Director, Examinations Branch | NY | This employee will be responsible for overseeing all FCM financial integrity and reporting activities. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). |

| Office | Numbering by Division/Office | Position | Location | Justification |
|--------|------------------------------|--|----------|--|
| MPD | 3 | Deputy Director, Capital Margin and Segregation Branch | DC | <p>This employee will be responsible for overseeing all intermediary capital, margin and fund segregation reporting activities, as well as FCM financial integrity and reporting activities. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p> |
| DA | 1 | Executive Director/Chief Administrative Officer | DC | <p>As Chief Executive Officer of the CFTC, this employee will be required to execute tasks that are necessary and incidental to the duties of CFTC employees whose responsibilities address emergency or excepted functions, including those imminent risk to the safety of human life or the protection of property. Such issues relate to oversight of OED responsibilities, including security, payroll, financial, contract, and IT functions, and direction of adjustments to excepted employee designations as required by changes in the circumstances presented during a shutdown. The duties likewise will include advising and supporting the Chairman and Commissioners, as well as other excepted employees, on matters arising during lapse of appropriations.</p> |
| DA | 2 | Chief Human Capital Officer | DC | <p>This employee will provide ongoing support to the excepted activities of presidential appointees and excepted staff with respect to all matters relating to human capital. This employee's presence is incidental but necessary to address emergency or excepted functions, including those that pose an imminent threat to the protection of property.</p> |

| Office | Numbering by Division/Office | Position | Location | Justification |
|--------|------------------------------|------------------------------|----------|--|
| DA | 3 | Senior Procurement Executive | DC | As the Senior Procurement Executive, this employee will provide support and oversee all on-going contracts to include contracts that that must continue in order to protect human life and/or protection of property as required. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). |
| DA | 4 | COOP Manager | DC | This employee will provide physical security and oversight of the security of excepted staff and presidential appointees. (This employee also will accept mail and update hotline to notify staff to return to work.) This employee's presence is necessary to address an imminent threat both to the safety of human life (managing the security of those employees who are deemed excepted and are required to report to work) and to the protection of property (managing the security of the Headquarters building and the property contained therein). This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). |

| Office | Numbering by Division/Office | Position | Location | Justification |
|--------|------------------------------|----------|----------|---|
| DA | 5 | CIO | DC | <p>This employee will oversee all activities of ODT to ensure that the excepted employees of the Commission have the electronic and technological capabilities necessary to perform. This employee's presence is necessary to provide critical support that is incidental to the work conducted by the excepted employees. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p> |
| DA | 6 | CISO | DC | <p>As the Chief Information Security Officer, this employee will ensure that the Commission's Technology Infrastructure remains protected and secure during a lapse in appropriations. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p> |

| Office | Numbering by Division/Office | Position | Location | Justification |
|--------|------------------------------|----------|----------|---|
| DOD | 1 | Director | DC | This employee will provide support to the CFTC mission divisions to ensure the effective flow of market data into databases at the CFTC. This employee's presence is necessary to provide critical support that is incidental to the work conducted by the excepted employees. This employee will also troubleshoot technology-oriented data issues that may impact the data loading process and ensure that all databases containing mission related information are functioning for excepted staff. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995) |

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

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

Operational During a Lapse of Appropriations:

The CFTC will maintain a limited staff of excepted employees: Division of Market Oversight (DMO), Division of Clearing and Risk (DCR), Market Participants Division (MPD), and Division of Data staff to perform oversight and surveillance of the futures markets, clearinghouses, and intermediaries; Enforcement staff to address open and active litigation cases; and certain other employees to perform work necessary and incidental to the execution of the aforementioned functions. The limited DMO/DCR/MPD/DOD staff identified as excepted will provide oversight of the derivatives market and to police those markets to ensure they are free of fraud and manipulation. Additionally, the CFTC will maintain limited staff in its Division of Administration, Information and Technology Branch (ITB) and Information Security Branch (ISB) to ensure security of information technology systems.

The limited CFTC staff will continue to monitor the following types of filings from registered entities to assess whether any additional excepted activity is necessary:

- Regulation 1.10 and 5.12 filings (financial reports of futures commission merchants (FCMs), introducing brokers (IBs), and retail foreign exchange dealers (RFEDs));

- Regulation 1.12 and 5.6 filings (notice provisions required by FCMs, IBs, and RFEDs);
- Regulation 1.15 filings (risk assessment reporting requirements);
- Regulation 1.16 filings (reports of accountants);
- Regulation 1.17 filings (capital requirements);
- Regulation 1.18 filings (current books and records);
- Regulation 1.65 and 5.23 filings (notice of bulk transfers);
- Regulation 39.19 (derivatives clearing organization reporting requirements);
- Regulation 40.6(a)(6) and (7) (emergency rule certifications);
- Regulation 40.10(h) (emergency changes certified by systemically important derivatives clearing organizations);
- Part 15 filings (general reporting requirements);
- Part 16 filings (clearing member reports);
- Part 17 filings (FCM reports);
- Part 18 filings (reports by traders);
- Part 19 filings (bona fide hedge position reports);
- Part 20 filings (large trader reporting for physical commodity swaps);
- Part 21 filings (special call provisions);
- Part 190 filings (bankruptcy rules);
- Chief compliance officer, swap valuation dispute, and risk exposure reports (per regulations 3.3(e), 23.502(c), and 23.600(c));
- Financial resource reports by swap execution facilities, designated contract markets, derivatives clearing organizations, and swap data repositories (per regulations 37.1306, 38.1101, 39.11, and 49.23); and
- Any emergency notification required to be reported to the Commission (such as system malfunctions, cyber security incidents, or financial emergencies).

The CFTC will continue to participate in functions that, if not continued, would prevent or significantly damage the execution of other funded government functions. See *Effect of Appropriations for Other Agencies and Branches on the Authority to Continue Department of Justice Functions During the Lapse in the Department's Appropriations*, 19 O.L.C. Op. 337, 338 (1995). For example, the CFTC will continue to participate in the activities of the Financial Stability Oversight Council (FSOC) during a lapse in appropriations. FSOC is funded by fees

and the Chairman is a voting member. Participating in other similar activities will be evaluated during a lapse based upon the appropriations status of other agencies.

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

Non-Operational During a Lapse of Appropriations:

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

- Most functions of DOE, including but not limited to: the review and investigation of victim complaints, initiating actions against wrongdoers and protecting any victim assets that may be at risk in such situations.
- Most functions of DMO, DCR, and MPD. In general, DMO, DCR, and MPD will not be processing filings that contemplate the possibility of Commission action,² including requests pursuant to:
 - Regulations 1.47 and 1.48 (bona fide hedge requests);
 - Part 30 (regulation 30.10 petitions for exemption and regulation 30.13 requests for certification);
 - Part 37 (swap execution facilities applications, demonstrations of compliance with core principles);
 - Part 38 (designated contract market applications, certifications of continued compliance in situations of merger or sale, and demonstrations of compliance with core principles);
 - Part 39 (derivatives clearing organization applications, Commission review of swaps for determinations on clearing requirement, requests for orders regarding competition, and demonstration of compliance with core principles);
 - Part 40 (rule and contract filings (both for self-certification and Commission approval), requests for confidential treatment of submissions, stays of certifications pursuant to regulation 40.12, and determinations related to making swaps available to trade);
 - Part 41 (filing of notice-designated contract markets trading security futures products);

² Furthermore, as a general matter all applicable deadlines for potential Commission action are tolled unless otherwise determined by LD.

- Part 48 (foreign board of trade registrations, adjudication additional contracts for trading);
- Part 49 (swap data repository applications, registration of successor entities);
- Regulations 145.7 and 145.9 (requests for Commission records, petitions for confidential treatment of information submitted to the Commission, and appeals of FOIA decisions);
- Regulation 140.99 (requests for exemptive, no-action, and interpretive letters).

DMO, DCR, and MPD will also not be producing the reports they produce during normal operations, such as the Commitments of Traders Report, weekly swaps report, and Cotton On-Call Report. See <https://www.cftc.gov/MarketReports/index.htm>. In other words, with the exception of the minimal level of excepted employees needed for the oversight and surveillance of the derivatives markets, the operations of DMO, DCR, and MPD will cease.

- Work relating to rulemakings and some other responsibilities mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203. Comment deadlines that expire during the lapse in appropriations will be deemed to be extended until the first business day after the restoration of appropriations unless the Commission indicates otherwise.
- Most functions of the Office of the Chief Economist, Office of Legislative and Intergovernmental Affairs, Office of Public Affairs, Office of Minority and Women Inclusion, and Office of International Affairs except those identified as excepted to be performed by the respective Office Director during the lapse in appropriations.
- Most functions of the Division of Administration and Legal Division, except to the limited extent that work is incidental to the excepted functions performed by other excepted employees. Meetings of the CFTC's various Federal Advisory Committees.