

Approved: 9-30-2011

Certified: 1-19-2018

**SUBJECT: PLAN FOR OPERATING IN THE EVENT OF A LAPSE IN APPROPRIATIONS**

1. PURPOSE. To establish the Department of Energy (DOE), including the National Nuclear Security Administration (NNSA), Plan and procedures for-
  - a. Continuing operations using available balances (unexpired prior-year appropriations, receipts, reimbursable authority, revolving funds, or other authority available by law), where available, during a lapse in appropriations and
  - b. Upon exhaustion of all available balances, (1) continuing only those functions excepted from shutdown and activities related to the safety of human life or the protection of property and (2) initiating orderly shutdown of those activities not included under (1).
2. CANCELLATION. DOE O 137.1A, *Plan for Operating in the Event of a Lapse in Appropriations*, dated 08-30-99.
3. APPLICABILITY.
  - a. Departmental Applicability. Except for the equivalencies/exemptions in paragraph 3.c., this directive applies to all Departmental elements.

The National Nuclear Security Administration (NNSA) Administrator will assure that NNSA employees comply with their respective responsibilities under this directive. Nothing in this Order will be construed to interfere with the NNSA Administrator's authority under Section 3212(d) of Public Law (P.L.) 106-65 to establish Administration-specific policies, unless disapproved by the Secretary.

BPA has been self-financed with a permanent, indefinite appropriation since 1974, does not receive annual appropriations and thereby this order is not entirely applicable to BPA. The Department's Chief Financial Officer, Chief Human Capital Officer, and the BPA Chief Financial Officer will work collaboratively to provide the DOE Chief Financial Officer and Chief Human Capital Officer any necessary and applicable information that DOE must report consistent with this Order.

- b. DOE Contractors. This Order does not apply to contractors.
- c. Equivalencies/Exemptions for DOE O 137.1B.

Exemption. This Order does not apply to the Federal Energy Regulatory Commission as an independent regulatory commission.

4. BACKGROUND.

- a. Initial Approved Funding Programs (AFPs) for the upcoming fiscal year are developed prior to October 1. If Congress fails to pass appropriations for the new fiscal year by October 1, it is likely a continuing resolution will be enacted to provide limited, interim funding. In this situation, allotments will be issued in accordance with the provisions of the continuing resolution and implementing guidance from the Office of Management and Budget (OMB).
- b. A continuing resolution provides budget authority for ongoing activities for a specific, limited period of time. The amount appropriated by a continuing resolution will vary, however, the terms of the continuing resolution will specify how to determine the amount of budget authority provided for each Treasury Appropriations Fund Symbol (TAFS). The terms specify the number of days covered and the specific basis for determining the amount of budget authority (such as the prior year appropriation acts, the current rate, the current year House or Senate proposed appropriation bills, the President's Budget Request, or some combination thereof).
  - (1) Prior to the beginning of the fiscal year, AFPs are prepared based on the most conservative funding levels for the new fiscal year. The "Advice of Allotment" (HQ F 2260.2) is issued in conjunction with the AFP but is restricted to the amount permitted under the terms of the continuing resolution. The funds provided by the allotment may not be used to—
    - (a) exceed any limitations or provisions specified in the terms of the continuing resolution; or
    - (b) exceed any obligation control levels established in the AFP; or
    - (c) exceed any administrative or statutory restrictions established in the Advice of Allotment.
  - (2) The Chief Financial Officer will provide additional information pertaining to operating under a continuing resolution, as necessary to ensure the orderly execution of program funds during this period.

5. REQUIREMENTS.

- a. Operating in the Absence of New Appropriations. This is commonly referred to as a "Lapse in Appropriations." The Attorney General of the United States issued an opinion on 4-25-80, that the language and legislative history of 31 United States Code (U.S.C.) 1341, the Anti-Deficiency Act, unambiguously prohibits Federal officials from incurring obligations in the absence of appropriations. Essentially, in the absence of appropriations for the new fiscal year, DOE may not incur new obligations, unless they can lawfully be funded from unexpired prior year appropriations, or are otherwise authorized by law. If no unobligated amounts

from unexpired prior-year appropriations exist, DOE may only incur obligations under authority of 31 U.S.C. 1342 for activities involving the safety of human life or the protection of property.

- (1) If neither regular appropriations nor a continuing resolution is enacted, only funds currently obligated to the contractors and available balances will be available for current fiscal year operations. Under this situation, each organization must carefully manage the funds available to ensure that only mandatory requirements (e.g., payroll, contracts, etc) are funded until an appropriation or continuing resolution is passed. Payroll and related fixed costs must be given the highest priority.
- (2) If a lapse in appropriations is likely to occur, the following actions will be taken:
  - (a) The Chief Financial Officer (CFO) or designee, in coordination with NNSA, will issue data calls to all Departmental elements as needed to obtain an estimate of the available balances, as well as any other needed information.
  - (b) The Chief Human Capital Officer (CHCO) or designee, in coordination with NNSA, will issue a data call to organizational elements as needed to obtain information on the identities and functions of proposed excepted employees (those who will be performing functions required during a lapse in appropriations), as well as any other needed information.
  - (c) The Senior Procurement Executive for DOE and NNSA or designee(s) will issue a data call to program offices via Heads of Contracting Activity and Procurement Directors as needed to obtain information regarding contracts and financial assistance agreements necessary to determine appropriate acquisition actions.
  - (d) The Departmental elements, including the NNSA, will respond promptly to any data calls issued by the CFO, the CHCO, the Senior Procurement Executive or their designees.
- (3) If a Lapse in Appropriations occurs (e.g., DOE's regular annual appropriations are not enacted and no continuing resolution is passed), DOE could face a no-funds situation for selected activities. A no-funds situation occurs when DOE is under a Lapse in Appropriations and all available balances are fully utilized for a given program, project or activity. Under this situation, Headquarters elements and field offices would be required to identify the affected programs, and the actions identified in paragraph 5c would apply.

- (4) The potential exists for no-funds situations to occur multiple times. If the continuing resolution is of a short duration (less than a year), DOE must prepare for a potential no-funds situation each time the continuing resolution expires. Should this situation occur, guidance will be provided by the CFO as each continuing resolution expires, and available balances will be distributed, as law permits. Because of the potential for a no-funds situation occurring upon expiration of a continuing resolution, current year funds provided under a continuing resolution should be used before other available balances, within legal restrictions. This will preserve the available balances for operations in the event a no-funds situation does occur. The actual timetable for shutdown depends on the type and amount of funding carried over and available (available balances) to the organization, function, program, or activity.
  - (5) In the case of time-limited funds, any unobligated balances expire for purposes of incurring new obligations at the end of the period of availability, and shutdown commences immediately. Departmental elements funded by no-year or unexpired multiyear appropriations must continue to perform all activities at the minimum level possible until all available balances carried over from prior fiscal years has been exhausted. If Congress has not enacted an appropriation or continuing resolution at that time, those Departmental elements must commence shutdown activities. Each Departmental element with funds available should exercise prudence in making new obligations.
  - (6) Departmental elements utilizing use of receipts, revolving fund, or reimbursable authority, or other available authority will continue to perform all activities until all available balances have been exhausted. If the receipts available for obligation are decreasing or likely to be interrupted, programmatic activities should be reduced to a minimum level to prolong operations.
  - (7) In the case of DOE activities financed by revolving funds, shutdown activities commence if the fund revenues are interrupted or exhausted. If the fund revenues are decreasing or likely to be interrupted, programmatic activities should be reduced to a minimum level to prolong operation of the fund.
- b. General Steps Before Initiating Shutdown. If the Congress fails to pass a continuing resolution or full-year appropriations bill, or if the short-term continuing resolution authority has expired, DOE will limit its activities to those necessary to continue operations at a minimal level, utilizing available balances. When the exhaustion of available balances is imminent (a no-funds situation) and no other authorized funding mechanisms are available, the Department must initiate actions necessary to begin the orderly shutdown of operations.

- (1) Budget Related Steps.
  - (a) The CFO will redistribute available balances to the extent permitted by law to forestall the interruption of operations.
  - (b) The CFO will notify organizations that funds have been reallocated below the appropriation and fund account level (such as between allottees, between obligation control levels, and/or between Reporting Entities, etc.). Such changes must be documented and/or immediately reflected in formal written revisions to DOE F 2260.2, "Advice of Allotment," as provided in the DOE Financial Management Handbook.
  - (c) DOE will use available reprogramming and transfer authority to reprogram and transfer funds between appropriations and/or fund accounts as necessary. The transfers will be effected in accordance with the standard fiscal procedures governing appropriation transfer of DOE funds. Such transfers generally will be effected on Standard Form (SF) 1151, "Nonexpenditure Transfer of Funds."
  - (d) As provided in OMB Bulletin 80-14, amounts contained in OMB apportionments may be adjusted without submission of a reapportionment request.
  - (e) After all available balances have been reallocated or transferred and the available balances finally exhausted, the organizations, functions, programs, or activities funded through the now-depleted appropriations must begin the orderly shutdown of all activities not identified as excepted.
  - (f) DOE may incur obligations for excepted and shutdown activities once available balances have been exhausted; however, no funds will be disbursed for these obligations without the enactment of an appropriations act or continuing resolution.
- (2) Personnel and Other Related Steps.
  - (a) Prior to a Lapse in Funding. Departmental elements must identify excepted activities to be continued during a no-funds emergency shutdown, where available balances have been exhausted, including those performed by DOE that are authorized by law and those involving the safety of human life or the protection of property.

The decision to continue any activities during a no-funds situation depends on the specific circumstances at that time. Not every action within an excepted activity is necessarily one that protects

life or property. Moreover, only the absolute minimum number of employees needed to perform authorized excepted activities should be identified. The heads of Departmental elements should submit their proposed list of excepted employees along with their title, series, grade, and individual justification to the CHCO. The CHCO, the General Counsel, and for NNSA, the NNSA General Counsel will jointly make the final decision on which employees will be authorized to perform excepted activities. All other Federal employees will be furloughed. If the Administrator of NNSA does not agree with the final list for NNSA, the matter may be elevated to the Secretary or Deputy Secretary for resolution.

Excepted activities must be performed at the absolute minimum level necessary. The minimum number of staff and support services may also be maintained to perform each of these activities. If an employee is not needed for a full work day to carry out excepted activities, they must only come into the office or otherwise perform their duties for the minimum period of time necessary to complete the excepted activities.

- (b) The CHCO must authorize the transmission of a “Furlough Decision Notice Due to Lapse of Appropriations” (5 Code of Federal Regulations, Part 752). This notice should be issued prior to the furlough, but when this is not feasible, any reasonable notice (telecommunication, written, or oral) is permissible. If prior written notice is not provided, DOE must provide the employee with a written decision notice at the earliest possible time following the furlough.
- (c) Departmental elements must notify excepted personnel of their status before shutdown occurs and inform them of their obligation to report to work in a non-pay status to conduct only excepted activities. Such employees are advised that the United States will not contest its legal obligation to pay for their service after appropriations are passed.
- (d) In advance of travel, during the period of time leading up to a lapse of appropriations, travel should be closely monitored to avoid unnecessary travel expenses.
- (e) Supervisors must contact any employee on travel status and advise him or her to return to the duty station immediately, unless the employee volunteers to be furloughed at the travel site and such arrangement is in the best interest of the Federal Government. Travelers should return in accordance with normal Federal Travel Regulations.

(f) Employee Recall. Employees required to complete shutdown activities and those employees required to maintain excepted activities during the shutdown period will be recalled only with the advice and approval of the CHCO, the General Counsel. For NNSA, the NNSA General Counsel must advise and approve the recall of any NNSA employee in coordination with the CHCO and the General Counsel. Shutdown activities include, but are not limited to the following:

- 1 Canceling meetings, hearings, and other previously arranged business and notifying parties such as other Federal agencies, State governments, and private entities involved in Departmental matters of the cessation of normal business.
- 2 Documenting the status of cases and projects so they can be resumed, transferred, or otherwise appropriately handled when the funding situation is determined.
- 3 Taking steps to plan, control, and maintain orderliness throughout the phase down of operations
- 4 Performing the fiscal and accounting tasks required to maintain accountability and reporting obligations and expenditures of all funds.
- 5 Performing 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.
- 6 Performing requisite administrative functions, such as processing the payroll of the previous pay period, and continuing those functions until available balances are exhausted.
- 7 Conducting other functions that contribute directly to the orderly shutdown of DOE, and protect life and safeguard Government property and records.

c. Instructions for Shutdown on Non-Excepted Activities.

(1) General Operations During a Lapse in Appropriations.

- (a) Only personnel designated as excepted from furlough will report to work during Departmental shutdowns. Excepted employees perform duties vital to the continuation of excepted activities as

determined under this order described in paragraph 5b(2)(a). These employees will not be furloughed under the provisions of this Order. Excepted employees also perform functions to orderly cease non-excepted functions as expeditiously as possible and will not be dismissed or excused from work due to emergency situations described in OMB Memorandum, "Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations," dated 8-28-80 (amended by OMB Memorandum, "Agency Operations in the Absence of Appropriations," dated 11-17-81, and further updated by Department of Justice memorandum, "Government Operations in the Event of a Lapse in Appropriations," dated 8-16-95).

- (b) The Servicing Human Resource Office must distribute copies of the specific furlough notice to each employee not designated as excepted. Personnel actions to effect the furlough will be processed centrally by the staff of the CHCO.
- (c) To facilitate the issuance of furlough notices, the CFO must notify the CHCO when available balances for specific organizations or functions remain available to cover activities for approximately 3 workdays.
- (d) Members of the Senior Executive Service (SES) will be furloughed in accordance with applicable law and DOE guidance.
- (e) Presidential appointees, who are outside the SES and are not otherwise subject to 5 U.S.C. 6301, the "Federal Employees Family Friendly Leave Act," and attendant regulations governing leave in the Federal service, are not subject to furlough.
- (f) The specific authority for furloughing individuals working under mobility agreements pursuant to the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4701), in organizations either inside or outside the Federal Government, will depend on the nature of individual agreements, the status of the appointments, and/or the funding arrangements for the assignments. As a general rule, the following principles apply in determining whether to furlough personnel on Intergovernmental Personnel Act mobility assignments:

1 Individuals from non-Federal organizations on appointments to DOE are subject to furlough in the same manner as other employees.



- 2 Individuals on detail to Federal agencies from non-Federal organizations may continue working, provided the non-Federal organizations pay the total costs of the detail.
  - 3 Personnel on detail to Federal agencies from non-Federal organizations that share the costs of the detail may continue to work, if the Federal portion of the cost was obligated from prior appropriations at the time of the Intergovernmental Personnel Act mobility agreements. If a furlough takes place in the second year of the agreement and no funds are appropriated at that time, the assignment should be terminated.
  - 4 Personnel on detail to Federal agencies from non-Federal organizations that do not pay or share the costs of the detail are subject to furlough in the same manner as other employees.
  - 5 Personnel on detail to Federal agencies from Federal agencies which are continuing full reimbursement are not subject to furlough. Because that employee is continuing to have his or her costs paid by his or her originating agency, the furlough will not apply to that individual.
- (g) Temporary employees must be furloughed in the same manner as permanent employees
  - (h) Excepted employees performing excepted activities may not be required to stay the entire workday. They must stay only as long as required to perform those activities for orderly shutdown or to perform identified excepted activities. Accurate documentation of time and attendance for excepted employees during the shutdown is the joint responsibility of both the employee and supervising official at the time.
  - (i) As employees required to perform shutdown activities complete their assigned work, they will be placed in a furlough status. Each employee's supervisor is responsible for promptly notifying the servicing personnel office through the organizational point of contact when an employee is placed on furlough for proper record keeping. The Servicing Human Resource Office must then notify the CHCO to initiate furlough action.
  - (j) Supervisors should identify employees or positions that are necessary to perform the functions associated with the orderly cessation of activity. These employees will continue to work for the length of time necessary to complete shutdown activities. All

shutdown activities should be accomplished to facilitate efficient reactivation of operations when funds are again available. The selection of employees to participate in shutdown activities should be based on the following criteria:

- 1 the number of employees or positions necessary for the orderly termination of an activity and
  - 2 the special knowledge, skills, or abilities required to terminate activities.
- (2) Prohibited Activities. Unless they are necessary to the direct support of authorized excepted activities, the following activities will not be permitted after available balances are exhausted unless the lack of the proposed activity would jeopardize a property interest of the United States or endanger human life. These activities include, but are not limited to:
- (a) awards of grants, contracts, cooperative agreements, scholarships, and small purchases;
  - (b) 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;
  - (c) travel of persons and transportation of things; persons in travel status on the first day of a lapse in appropriations will return to their duty stations as soon as possible, as provided in Paragraph 5b(2)(e);
  - (d) meetings, conferences, and seminars;
  - (e) new or continued employment of experts and consultants, if such actions will incur a financial obligation;
  - (f) training classes and other training activities;
  - (g) use of equipment and utilities (including the use of Government issued blackberries, tokens, and other devices) not related to authorized activities where their use creates liabilities for the Government beyond those existing on the date of the funding lapse; and
  - (h) authorization of overtime.
- (3) The list in paragraph 5b(2)(a) should not be considered exhaustive. Actions taken should be consistent with the Attorney General's opinion

(see letters dated 4-25-80 and 1-16- 81) and subsequent OMB guidance. Questions of interpretation should be referred to the CHCO, the Office of the General Counsel, or General Counsel for NNSA as appropriate.

6. RESPONSIBILITIES.

a. Secretary.

Designate the CHCO, the CFO, and the General Counsel or his or her designee to coordinate activities associated with the shutdown plan. The designated group will coordinate all activities and information through the designated point of contacts.

a. Heads of Departmental Elements, including NNSA.

- (1) Review as needed the list of excepted activities to determine whether any activities should be deleted or new activities added; Identify those employees necessary to maintain and continue excepted activities and those needed to perform shutdown activities; Respond promptly to the CHCO's call regarding excepted personnel, and submit this information to the CHCO, as required.
- (2) Provide written notification to excepted employees of their designation as such in writing and emphasize that they may perform only those activities identified as excepted or part of the shutdown operations.
- (3) Designate an individual from each organization to serve as the point of contact for instructions pertaining to overall implementation of the shutdown plan and subsequent reactivation of DOE operations.
- (4) Notify appropriate bargaining agents of any proposed shutdown due to a lack of funds as soon as feasible after the decision has been made and prior to delivery of furlough notices to employees.
- (5) Respond promptly to the CFO's call for estimated available balances and mandatory requirements.

b. General Counsel.

- (1) Assist the Secretary and heads of Departmental elements in identifying both the excepted functions performed by DOE and the associated excepted personnel required to perform these functions to ensure compliance with OMB guidance and opinions of the Attorney General.
- (2) Provide review of reprogramming and transfer packages.
- (3) Provide review of employee furlough notices.

- (4) Participate with the CHCO in the review of excepted activities and the lists of employees requested to perform those activities including and follow-on requests for employee recalls. The NNSA General Counsel must concur on all such requests from NNSA in coordination with the General Counsel and CHCO.
- (5) Provide review of Congressional testimony statements related to any lapse in appropriations.
- (6) Provide review of guidance on the use of federally funded technology devices.

c. Chief Financial Officer (CFO).

- (1) Establish financial mechanisms to track and monitor all obligations incurred in maintaining excepted activities and terminating Departmental operations as funds are depleted.
- (2) Notify the CHCO when available balances for specific organizations or functions remain available to cover activities for approximately 3 workdays.
- (3) In conjunction with General Counsel, and NNSA General Counsel, and within the limitations permitted by law, redistribute available balances to meet urgent requirements and to delay, to the extent possible, the shutdown of functions and organizations, and provide guidance on the continuation of Work for Other activities.
- (4) Notify the Secretary when funds for specific functions or organizations are depleted and shutdown procedures are to be implemented.

d. Chief Human Capital Officer (CHCO).

- (1) In conjunction with the General Counsel, obtain and approve the lists of excepted activities and the employees requested to perform those activities including any follow-on requests for employee recalls from Departmental elements. The NNSA General Counsel must concur on all such requests from NNSA, in coordination with the General Counsel and CHCO.
- (2) Prepare examples of furlough notices consistent with OPM and DOE regulations and policies, and transmit the examples to the General Counsel for review and approval.
- (4) Delegate to servicing human resources offices authority to issue furlough notices to the field elements.
- (5) Manage the batch processing of furlough personnel actions for all applicable Departmental elements.

- (6) Provide guidance on the rights and benefits of employees while they are in a furlough status.
  - (7) Coordinate the review and approval of employee recalls with the General Counsel and NNSA General Counsel.
- e. Heads of Contracting Activities.
- (1) Comply with directions and information requests issued by the Senior Procurement Executive.
  - (2) Suspend acquisition and assistance awards pending validation of program award decisions.
  - (3) Facilitate the deobligation of funds for unexpired appropriation accounts through contract modifications to maximize funds availability for DOE activities.
  - (4) Ensure timely modification of contracts in accordance with program determinations.
  - (5) Ensure contract actions have been properly approved.
- f. Program Managers at Headquarters and Field Elements.
- (1) Review all pending and active program release or obligation documents to determine whether the action should be continued or canceled.
  - (2) Submit each program release document or obligation document to the appropriate senior official, pursuant to paragraph 6.a., for review and to determine whether the request appears to be for an excepted function.
  - (3) Certify on each program release document that the commitment or obligation of funds is excepted in accordance with the functions permitted during a period of funding hiatus.
- g. Chief Information Officer (CIO).
- Prepare and distribute guidance on the use of federally funded technology devices as required, after review by the General Counsel.
- h. NNSA General Counsel.
- Coordinate with the CHCO and the General Counsel on the review and approval of excepted employees and recalled employees for NNSA.
- i. Field Chief Financial Officers.

- (1) In coordination with CFO analyze expenditure rates of all programs and contractors within their allottee in order to determine available balances.
- (2) In coordination with CFO work with program offices to inform them of any programmatic disruptions that appear inevitable upon exhaustion of available balances.
- (3) In coordination with CFO and in accordance with DOE M 135.1-1A, Department of Energy Budget Execution Funds Distribution and Control Manual, work with program and procurement officials to obligate and de-obligate funding in STRIPES, expedite contract actions as necessary, and process the necessary financial plan and funding documents.

j. Servicing Human Resources Offices.

- (1) Notify appropriate bargaining agents of any proposed shutdown due to a lack of appropriations as soon as feasible after the decision has been made and prior to delivery of furlough notices to employees.
- (2) Negotiate the impact and implementation of the shutdown of operations if time permits in accordance with DOE policy and the Federal Labor Management Relations Statute (5 U.S.C., Chapter 71). The decision to shutdown operations due to a lack of funds is not negotiable; therefore, negotiations will not preempt that decision.
- (3) Issue furlough notices to employees for whom they are responsible in accordance with the guidance and examples provided by the CHCO.
- (4) Notify employees of their rights and benefits while they are in a furlough status in accordance with the guidance provided by the CHCO.

7. REFERENCES.

- a. Title 5 CFR, Part 752, "Adverse Actions," which incorporates the principal statutory requirements for suspensions of 14 days or less for employees in the SES.
- b. Title 5 U.S.C., Chapter 71, "Labor Management Relations," protects the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions that affect them.
- c. Title 5 U.S.C., Section 6301, "Federal Employees Family Friendly Leave Act," which governs leave in the Federal service.
- d. Title 31 U.S.C., Section 1341, "Anti-Deficiency Act," which states that no Federal officer or employee may authorize Government obligations or expenditures in advance of or in excess of an appropriation, unless otherwise authorized by law.

- e. Title 31 U.S.C., Section 1342, which states no Federal officer or employee may accept voluntary services, except as authorized by law.
- f. DOE O 327.1, *Furlough or Reduction in Force in the Senior Executive Service*, dated 5-15-03, which establishes Departmental procedures for furlough of SES employees.
- g. DOE O 135.1A, *Budget Execution – Funds Distribution and Control*, dated 1-9-06, which sets forth DOE requirements and responsibilities for the distribution and control of all obligational authority available to DOE for conducting operations.
- h. DOE M 135.1-1A, *Department of Energy Budget Execution Funds Distribution and Control Manual*, dated 1-9-06, which provides detailed procedures for distributing and controlling DOE funds, and establishes the procedures for reprogramming, restructuring, and initiating appropriation transfer actions for DOE.
- i. DOE Financial Management Handbook, which presents DOE standards, procedures, and operational requirements in support of DOE accounting policies, principles, and legal requirements.
- j. General Accounting Office Report, “Funding Gaps Jeopardize Federal Government Operations,” dated 3-3-81, which addresses the problems created by late appropriations and fund interruptions; describes the factors that delay the enactment of legislation; and recommends action to prevent funding delays in the future.
- k. OMB Bulletin 80-14, as amended 8-20-82, “Shutdown of Agency Operations upon Failure by Congress to Enact Appropriations,” which provides policy guidance and instructions for actions to be taken when Congress fails to enact appropriations.
- l. OMB Memorandum, “Agency Operations in the Absence of Appropriations,” dated 9-30-80, which states that in the absence of new appropriations, agencies may continue only those activities otherwise authorized by law, and those necessary to begin phasing down other activities.
- m. OMB Circular No. A-11 (2010), Section 124, “Agency Operations in the Absence of Appropriations,” which states that Federal officers may not incur any obligations that cannot lawfully be funded from prior appropriations unless such obligations are otherwise authorized by law.
- n. Opinion of the Attorney General, in a letter from Benjamin R. Civiletti to the President, dated 4-25-80, which states that upon a lapse of appropriations, Federal agencies may incur no obligations that cannot lawfully be funded from prior appropriations unless such obligations are otherwise authorized by law. It further

states that the Department of Justice would enforce the criminal provisions of the Anti-Deficiency Act in the case of future willful violations.

- o. Opinion of the Attorney General, in a letter from Benjamin R. Civiletti to the President, dated 1-16-81, (43 Op. Atty. Gen. 293) which provides the basis for OMB's guidance of 9-30-80, on agency operations during a lapse of appropriations and presents additional questions of interpretation.
  - p. Opinion of the Assistant Attorney General, Walter Dellinger, in a letter to Alice M. Rivlin, Director, OMB, dated 8-16-95, which clarified that only those functions considered emergencies involving the safety of human life or the protection of property would continue upon exhaustion of available funding.
8. CONTACT. Office of Budget, 202-586-4180.

BY ORDER OF THE SECRETARY OF ENERGY:



DAN BROUILLETTE  
Deputy Secretary