

FEDERAL ENERGY REGULATORY COMMISSION
Washington, DC 20426

SUBJECT: Plan for Operating in the Event of a Lapse in Appropriations

1. OVERVIEW If FERC has a lapse in appropriations, FERC will do an orderly shutdown of non-excepted activities. The performance of excepted activities will require FERC to retain 56 employees and 18 contractors. FERC currently has 1,478 employees on-board. Retained employees would equal 3.8 percent of total employees. Retained employees and contractors would equal 5.0 percent of total employees.
2. OBJECTIVES In accordance with OMB Circular A-11, Preparation, Submission, and Execution of the Budget, the Federal Energy Regulatory Commission (FERC) establishes this plan and procedures for -
 - a. continuing operations using available balances from prior years during a lapse in appropriations;
 - b. upon exhaustion of all prior year balances, continuing only those excepted functions authorized by law; and
 - c. initiating the orderly shutdown of those activities not considered excepted.
3. REQUIREMENTS
 - a. Operating in the Absence of New Appropriations. Title 31 United States Code §1341 (Antideficiency Act) unambiguously prohibits Federal officials from incurring obligations in the absence of appropriations. Accordingly, FERC may not incur obligations that cannot be lawfully funded from prior year appropriations, unless such obligations are otherwise authorized by law.
 - i. FERC utilizes no-year appropriations to defray its operating costs. These appropriations remain available until expended. During a hiatus in appropriations, FERC will utilize available carryover funds from the prior fiscal year to forestall interruptions in agency activities.
 - ii. Upon exhaustion of all prior year balances during a funding hiatus, FERC will continue only those excepted activities authorized by law. The activities FERC will continue are those which may be found under applicable statutes to:
 - 1) Conduct excepted activities to the extent that they protect life and property.

- 2) Conduct those activities required to provide for the orderly shutdown of other agency activities deemed non-excepted. This would entail the cessation of activities that do not protect life and property under the terms of the Antideficiency Act.

4. LAPSE PLAN SUMMARY OVERVIEW

FERC Lapse Plan Summary Overview	
Estimated time (to nearest half day) required to complete shutdown activities:	<i>1/2 day</i>
Total number of agency employees expected to be on board before implementation of the plan:	<i>1,478</i>
Total number of employees to be retained under the plan for each of the following categories (may include duplicated counts):	
Compensation is financed by a resource other than annual appropriations:	<i>0 employees</i>
Necessary to perform activities expressly authorized by law:	<i>0 employees</i>
Necessary to perform activities necessarily implied by law:	<i>0 employees</i>
Necessary to the discharge of the President's constitutional duties and powers:	<i>0 employees</i>
Necessary to protect life and property:	<i>56 employees</i>
Brief summary of significant agency activities that will continue during a lapse:	

During a lapse in appropriations, the following excepted activities **will** be performed: public safety through continued inspection of licensed hydroelectric projects and approved LNG projects under construction as well as licensed hydroelectric and LNG projects in operation; continued monitoring of the reliability of the bulk power system and threats to energy infrastructures under the Commission's jurisdiction; monitoring energy markets under FERC jurisdiction for any urgent matters to protect property from market manipulation or other violations of Commission rules; legal advice to the Chair, Commissioners, and excepted personnel regarding excepted functions; security of physical and IT assets, and other minimally required operations described in this plan.

5. PROCEDURES

- a. Upon a hiatus in appropriations, FERC will immediately utilize and exhaust all carryover funds to support operations for a limited term. Management will project the span of time in which operations would be supported using carryover funds and execute financial plans accordingly.
- b. Upon exhaustion of these prior year balances, FERC will continue activities deemed excepted to operate the agency during an appropriation's hiatus. The following activities are deemed excepted and are authorized under exceptions

provided by Title 31 United States Code § 1342. These activities entail direct programs which provide for the protection of life and property as well as the related mission support (i.e., legal, financial, human resources, etc.) required to successfully execute the objectives of these programs.

i. Action by the Commission

All five Members of the Commission are Presidentially appointed and Senate-confirmed (PAS) and thus will continue working despite any lapse in appropriations. Additionally, the activities associated with conveying formal action of the Commission will need to continue as provided by the Commission's Secretary.

ii. Hydroelectric and Liquefied Natural Gas (LNG) Project Inspections

This program ensures public safety through continued inspection of licensed hydroelectric projects and approved LNG projects under construction as well as licensed hydroelectric and LNG projects in operation. Projects under construction are inspected to ensure that they meet all provisions of the license, that they employ sound construction and quality control practices, and that they maintain significant detailed records.

Projects in operation are inspected to see that they are being properly maintained to ensure the continued safety of the structures, that no unauthorized modifications have been made, and that the project is being operated efficiently and safely and in compliance with the terms of the license and Commission's order.

Availability of travel funds is excepted for such inspections and potential emergency situations involving the safety of licensed and LNG projects.

iii. Monitoring of Electric Reliability and Threats to Jurisdictional Infrastructure

This work protects public safety through continued monitoring of the reliability of the bulk power system and threats to energy infrastructures under the Commission's jurisdiction. The Commission monitors the real time operations of the bulk power system, including use of a 24/7 emergency message notification system to provide all five Members of the Commission with timely information during emergencies and system disturbances, in advance of full-scale event analysis. The Commission also works with other governmental agencies and regulated entities to promote timely identification of and

solutions to potential cyber and physical security risks to the operations of jurisdictional infrastructure. The excepted staff will perform a minimum level of these oversight roles, to monitor for urgent matters.

iv. **Market Monitoring**

This work involves monitoring energy markets under FERC jurisdiction for any market manipulation or other violations of Commission rules, as well as any behavior warranting changes in Commission-approved rates, terms or conditions. Actions in these markets sometimes require the Commission to act urgently to protect the property of market participants. The excepted staff will perform a minimum level of oversight, to monitor for urgent matters.

v. **Legal and Enforcement Matters**

There is a need for ongoing legal advice to the Chair, Commissioners, and excepted personnel regarding excepted functions.

With regard to matters pending before the Federal courts, FERC will request stays in the related proceedings citing limitations of Title 31 U.S.C. § 1342 relative to the Commission's ability to participate incident to a lapse in appropriations. If the courts deny the stay and explicitly or implicitly rule that FERC participation in these matters is authorized under the protection of life and property exceptions provided in 31 U.S.C § 1342 or some other applicable provision of law, FERC staff will be required to meet obligations established by these courts.

vi. **Commission Infrastructure**

Information Technology: In order to maintain information technology operational service for excepted functions, sufficient funds must be made available to continue Federal- and contractor-provided operational services and to maintain systems for when the shutdown is over. Appropriate personnel to supervise the services involved in this activity are excepted.

Protective Operations, Building Security and Maintenance: The Commission's team of special agents deputized by the U.S. Marshals Service will continue to provide protective services for the FERC Chairman and Commissioners. In addition, sufficient funds must be made available to continue security and maintenance of Federal property in Commission Offices, until such time as appropriations are resumed. Appropriate personnel to supervise the funds involved in this activity are also excepted.

Funds Certification and Contract Monitoring Activity: Sufficient personnel to authorize and monitor expenditure of previously committed funds, as well as those funds necessary to carry out the activities which have been identified as having an impact on public health and safety, are excepted.

- c. Upon a hiatus in appropriations and after available prior year balances have been exhausted, FERC must begin the orderly shutdown of all activities not deemed excepted as provided in section **3.b. i.– iv** of this plan. The Commission expects to complete these activities within ½ business day following notification of a hiatus in appropriations.
 - i. FERC will cease the acceptance of filings from the public and postpone all deadlines and due dates for all pending matters not related to excepted activities. Accordingly, FERC will issue notice informing the public of its action.
 - ii. FERC will curtail contractual support services to levels required to support only excepted activities. Accordingly, FERC will issue notifications to affected vendors.
 - iii. FERC will take the necessary personnel actions to release employees not performing excepted activities in accordance with applicable laws and regulations of the Office of Personnel Management (OPM). It will prepare employee notices of furlough and process personnel and pay records in connection with shutdown furlough actions.
- d. FERC will maintain only excepted activities as provided by this plan until the hiatus of appropriations has ended.

6. DISPOSITION OF FERC PERSONNEL DURING A HIATUS OF APPROPRIATIONS

- a. As of September 12, 2020, the Commission has **1,478** employees on-board. The Commission has **no** employees that will be retained under its shutdown plan engaged in military, or direct provision of health care activities. Additionally, FERC has **no** employees that are financed by sources other than annual appropriations.
- b. The following table presents the number of Commission employees and contractors that will be required to perform excepted activities under the terms of 31 U.S.C. §1342. All employees and contract personnel are retained under the plan to perform activities which protect life and property. As such, these

employees are not subject to furlough. Employees retained to perform excepted functions comprise approximately 3.8% of total on-board employees less exempt Presidential appointees.

Activity	Description	Number of Federal Employees	Number of Contractor Personnel
i.	Action by the Commission	2	-
ii.	Hydroelectric and Liquefied Natural Gas Inspections	19	-
iii.	Monitoring of Electric Reliability and Threats to Jurisdictional Infrastructure	4	-
iv.	Market Monitoring	3	-
v.	Legal and Enforcement Matters	11	-
vi.	Commission Infrastructure	17	18
	Total Employees/Contractor Personnel	56	18

- c. It is important to note that the Commission has five (5) presidential appointees that are exempted from furlough. These appointees are Members of the Commission and play a critical role in excepted activities that will continue during a lapse in appropriations. Other provisions of law provide their exempt classification per OPM guidance.
- d. Taking into consideration all exempted employees and those employees retained to protect life and property, a total of 61 employees will remain engaged with the Commission during a hiatus in appropriations. The contract personnel provided in the shutdown plan provide physical security for FERC facilities and information technology support services for excepted applications.