

TO: All Department of the Interior Employees

I want to provide you with important information and guidance concerning efforts to plan for and address a potential lapse of appropriations and government shutdown on Tuesday, October 1, 2013.

While the Administration get believes that a lapse in funding should not occur, we have a responsibility to the public and to our employees to do everything possible to prepare for a potential shutdown.

These are challenging times – and we understand that these circumstances are challenging to you and your family. A lapse in government activities could impose hardships on you, your families, and the people we serve. We hope that Congress acts quickly to prevent a shutdown and pass a continuing resolution. In the meantime, we want you to know that we are doing everything we can to prepare for a potential shutdown. We will provide you with as much information as possible.

The information, guidance and resources outlined below cover the most important information that you will need to know over these next few days. I encourage you to read it, to print out the Shutdown Checklist for Furloughed Employees, and to make note of telephone numbers you can call and websites you can visit to help keep you updated on the latest information.

Employee Status during a Funding Lapse

If a shutdown occurs, most of our agency's staff will be furloughed. Other employees will be designated as "exempt" or "excepted". Employees who fall into these specialized categories have been apprised of their designation. Exempted employees are able to continue to work because they are funded from non-lapsing appropriations. Excepted employees will continue to work, despite lapsing appropriations, in order to protect life and property.

A set of general questions and answers can be found on <http://www.doi.gov/shutdown>

Shutdown Notification

If there is a lapse in appropriations on Tuesday, October 1, 2013 and Congress has not passed an appropriation or continuing resolution and we have direction to proceed with shutdown the following applies:

Employees should report to work at their normal time and will be given up to four hours to conduct shutdown activities. Within the four hour timeframe, an employee should complete their timesheet, work with their supervisor to secure property and files, receive a furlough letter and acknowledge receipt, and conduct other activities as directed. Supervisors may make other arrangements with employees in order to accomplish these shutdown activities through other means, such as teleworking. Employees should report to work unless they have received different direction from their supervisors. Some employees will be given additional time, on an exception basis only, for shutdown activities that will extend beyond the 4 hours. Your supervisor will inform you if you are one of these individuals that is needed to help with these efforts.

If there no lapse in appropriations and the government is operating, the following applies:

Employees should report to work on their normal schedule unless the employee is on previously scheduled and approved leave or is approved for telework or has made other arrangements with their supervisor. Employees should work with their supervisors on any specific circumstances not addressed in this general guidance.

A set of human resources questions and answers can be found on <http://www.doi.gov/shutdown>

Shutdown Activities

All employees will be required to complete a series of shutdown activities. Employees must use their time for shutdown activities only, not to work on any projects, tasks, activities or respond to emails. Shutdown activities include:

- Accessing your email.
- Reading your furlough notice and affirming to your supervisor that you did receive it.
- Changing your voicemail message to indicate you will be out of the office for an unspecified time.
- Changing and enabling your email "out of office" message.
- Securing your work documents appropriately.
- Completing your time card.
- Securing your work station and securing government property.

A checklist of shutdown activities with additional guidance is included at the end of this message.

Telework

Employees who have been approved to telework on Tuesday, October 1 should complete as many shutdown activities as possible (please see attached checklist) before they leave work on Monday, September 30, including completing their timecards, so that on Tuesday, October 1, their responsibilities will be to read their furlough email notification and affirm to their supervisor that they did receive it.

Time and Attendance

In the event of a government shutdown, employees should record their actual hours for the current pay period, 2013-21, as you normally would for the time period September 22-30, 2013. On October 1, record the actual amount of time spent on shutdown activities up to 4 hours as regular time worked.

- For employees who are not exempt or excepted and would be furloughed – record the balance of the pay period, October 2-5, against the Furlough pay code (pay code 103).
- For employees who are excepted and remain on duty to protect life and property - record the balance of the pay period, October 2-5, against the Furlough pay code (pay code 103).
- For employees who are exempt and will continue to work because they are paid from non-lapsing appropriations – report all hours worked as you normally would.

A set of questions and answers on this are at the end of this document.

Employee Pay

October 1, 2013 is a regular payday covering the pay period ending Saturday, September 21, 2013. Employees will be paid on schedule for their hours worked during that pay period. If a shutdown continues, all employees can expect to be paid on Tuesday, October 15, 2013 for hours worked from September 22, 2013 through September 30, 2013. During the shutdown, exempted employees will be paid for actual hours worked in subsequent pay periods every two weeks. Excepted employees will be paid for actual hours worked during the shutdown upon the next regular payday following passage of a funding bill. Congress will determine if furloughed employees will be paid subsequent to enactment of an appropriation or continuing resolution.

Use of Electronic Equipment

Please keep in mind that employees are prohibited from working while furloughed, including using agency owned computers, mobile devices, and using remote access service to access email or other applications. You should turn off all devices and secure and store government equipment.

Leave

If you have been previously approved to take leave on Tuesday, October 1, and there is a shutdown, your leave will be cancelled. You are expected to report to your duty station unless you have made alternative arrangements with your supervisor. If there is no shutdown or the government reopens and you had pre-existing leave plans, you should contact your supervisor to ensure your leave approval is still in place or if you are needed to return to work.

Travel

All employees should refrain from beginning official travel leading up to a possible shutdown and should not be traveling during the shutdown, with certain exclusions.

- Exempt employees who are funded through non-lapsing appropriations may travel with the appropriate approvals from their supervisor.
- Excepted employees who need to travel to protect life and property should do so with the approval of their supervisor. If there is a shutdown, please check with your supervisor to find out if you should immediately return to your duty station or remain in travel status.
- Employees who would be furloughed and are on travel when the shutdown occurs, must return to their duty station as soon as possible.
- Employees assigned overseas are not considered to be in travel status because their overseas location is considered their permanent station.
- Employees on extended TDY travel where a detail personnel action (SF52) was issued and funded should not return to their home location unless instructed by their supervisor.

A set of travel questions and answers can be found on <http://www.doi.gov/shutdown>

Access to Buildings and Facilities

The Main Interior Building (MIB) and South Interior Building (SIB) will be closed to the public throughout the shutdown with access by employees who are exempt or excepted. Employees that are furloughed will be able to access the credit union – please stop at the guard desk to check in.

The cafeteria in MIB will be closed. The snack bars in MIB and SIB will be open.

Parking will be available for those employees that have parking permits for MIB, SIB and the Federal Reserve if they are exempt or excepted. Ramp A and D will be open.

Agency Services

During a government shutdown, for MIB and SIB there will be no shuttle or mail services and all health units and fitness centers will be closed. The MIB child day care centers will be closed throughout the duration of the shutdown.

Information Resources

There are a number of resources available where you can get further shutdown information and status updates. Shutdown information can be found on <http://www.doi.gov/shutdown>

In addition, furlough guidance can also be found at the Office of Personnel Management website at www.opm.gov/furlough. Also, you are encouraged to listen to the news media to obtain information on the status of government funding and whether a shutdown is necessary.

Shutdown Checklist for Furloughed Employees

- Meet with your supervisor to obtain additional necessary details and guidelines about shutdown procedures.
- Provide information about where your supervisor can reach you in the event the government reopens – home phone, personal cell phone, relative phone, etc.
- Access your email and read your furlough notice and affirm to your supervisor that you have received it.
- Change your voicemail message. Suggested language for employee voicemail:
“I am out of the office for the duration of the government shutdown. I will not be checking messages, but will return your call upon my return to the office.”
- Change and enable your email “out of office” message. Suggested message:
“I am out of the office for the duration of the government shutdown. I will not be checking messages, but will return your email upon my return to the office.”
- Secure your work documents appropriately and are not left out in the open.

- Turn off and put away devices, phones, laptops, etc. for safekeeping.
- Throw out any perishable food.
- Remove or store any personal items for safekeeping.
- Complete your time card
- Turn off the lights and lock the door when you leave (presuming there are no other occupants in the office).

FAQ'S FOR ENTRY OF TIME & ATTENDANCE DURING GOVERNMENT SHUTDOWN
SEPTEMBER 27, 2013

1. I have received notice that I will be furloughed (not excepted) during the government shutdown. How do I enter my time and attendance?

For the current pay period, 2013-21, *through September 30*, report all hours worked, leave taken, etc., as you normally would (only for September 22-30).

On October 1st, employees will come into work for an orderly shutdown of their workplace. Most employees will complete shutdown activities in four hours or less. Record the **actual** amount of time spent in shutdown activities, **up to 4 hours**, as regular time worked. For example, an employee that completes shutdown activities in two hours should only record two hours as regular time. The balance of October 1st should be recorded against the Furlough pay code (pay code 103).

The remainder of the October 2-5 period should be recorded against the Furlough pay code (pay code 103).

Note: If an employee's shutdown activities take longer than four hours, these should be recorded outside the system. After government operations resume, an amended timesheet will need to be completed reflecting the actual hours worked to shutdown operations.

2. I have received notice that I have been excepted from the furlough. How do I enter my T&A?

For the current pay period, 2013-21, *through September 30*, report all hours worked, leave taken, etc., as you normally would (for September 22-30).

On October 1st, excepted employees may report time worked supporting shutdown activities as regular time worked. **Only 4 hours may be recorded as regular time.** The balance of October 1st should be recorded against the Furlough pay code (pay code 103).

For the balance of the pay period (October 2-5), hours should be recorded against the Furlough pay code.

Excepted personnel should keep track off-line the hours worked for later submission of an amended timesheet when Congress enacts an appropriation bill.

3. I have received notice that I am exempt from the furlough. How do I enter my T&A?

Exempt personnel are funded by a non-lapsing appropriation, and therefore you report all hours worked or leave taken as you normally would.

4. What if I am furloughed, but it's only for a few days?

If Congress enacts an appropriation bill and an employee Returns to Duty anytime between October 1 – October 5, 2013 (in pay period 2013-21), timesheets would need to be “unverified” to allow for update for actual hours worked and/or furlough hours. Normal T&A processing procedures would then be followed.

5. What if the furlough lasts longer than this pay period, 2013-21, which ends on October 5?

Exempt employees will continue to record their actual time worked.

For excepted personnel, hours should continue to be recorded against the pay code 103 (furlough hours). Excepted personnel should continue to keep track off-line the hours worked for later submission of an amended timesheet when Congress enacts an appropriation bill.

IBC will assume that timesheets not submitted by October 23 (for the pay period ending October 20), should be charged to pay code 103 (furlough hours).

10/17/2013
website

Contracts Decision Tree

Sept 2013

Is the contract fully funded using FY 13 appropriations or are other funds available to fund it (no year or multi-year)?

If **YES**, will contract require government supervision?

If **NO**, contract can continue if contract is a sensible use of taxpayer funds.

If **YES** and an excepted individual will be available to oversee it in between excepted activities (and overseeing the contract does not interrupt, interfere with, or delay the individual's performance of an excepted function), the contract may continue during the furlough, provided the furlough is brief.

If **NO**, is the contract necessary to support one of the following excepted functions?

- A. A statute or other legal requirement expressly authorizes an agency to obligate funds in advance of appropriations; or
- B. The function addresses emergency circumstances, such that the suspension of the function would imminently threaten the safety of human life or the protection of property; or
- C. The function is necessary to the discharge of the President's constitutional duties and powers (e.g., Commander-in-Chief or conducting foreign relations).

If **NO**, contract cannot continue.

If **YES**, will contract require government oversight?

If **NO**, contract can continue.

If **YES**, there must be excepted individuals available to oversee it, so the contract may continue during the furlough.

Contracts Decision Tree
Sept 2013

Is the *contract/agreement/partnership/grant* fully funded using FY 13 appropriations or are other funds available to fund it (no year or multi-year)?

If **YES**, will contract require government supervision?

If **NO**, contract can continue if contract is a sensible use of taxpayer funds.

If **YES** and an excepted individual will be available to oversee it in between excepted activities (and overseeing the contract does not interrupt, interfere with, or delay the individual's performance of an excepted function), the contract may continue during the furlough, provided the furlough is brief.

If **NO**, is the contract necessary to support one of the following excepted functions?

A. A statute or other legal requirement expressly authorizes an agency to obligate funds in advance of appropriations; or

B. The function addresses *emergency circumstances*, such that the suspension of the function would *imminently threaten the safety of human life or the protection of property*; or

C. The function is necessary to the discharge of the President's *constitutional duties and powers* (e.g., Commander-in-Chief or conducting foreign relations).

If **NO**, contract cannot continue.

If **YES**, will contract require government oversight?

If **NO**, contract can continue.

If **YES**, excepted individuals will be made available to oversee it, **AND** the contract may continue during the furlough.

Other Considerations –

- If the *contract/agreement/partnership/grant* performance requires access to DOI facilities that are closed, most bureaus have suspended performance
- If performance is at a facility where operations are limited (e.g. MIB) many support services contracts have a reduced scope of performance

DRAFT

September 26, 20113

[Contractor Name]
[Contractor Address 1]
[Contractor City, State Zip]

Dear Contractor,

As you are likely aware, the Congress has yet to pass a fiscal year 2014 budget or a continuing resolution and there is a possibility that there will be a lapse of appropriation on October 1st 2014. As partners with the Department of the Interior (DOI), we are writing to provide you with timely and clear information about how this unfortunate budget situation impact us, and in turn what it means for our contract with you.

At this time, the DOI is taking every step to prepare for a lapse in appropriation, but based on our initial analysis, it is likely that your company's workforce, revenue, and planning processes may be affected. For example, the Department may determine it necessary to stop or suspend work, reduce the scope of work, or partially or completely terminate your contract for convenience. Additionally, planned contract actions for new work may be rescope, delayed, or canceled depending on the nature of the work and the degree to which it directly supports the agency's mission goals.

To the extent that your contract is affected due to these budget cuts, you will be contacted by the appropriate Contracting Officer with additional details.

Thank you for your continued partnership with the Department of the Interior, and for your cooperation as we work together to manage these unfortunate circumstances.

Sincerely,

[Insert Date]

[Insert Contractor POC Name]

[Insert Contractor POC Title]

[Insert Contractor Name]

[Insert Contractor Address]

SUBJECT: Suspension of Work

Re: [Insert Contract Number]

Dear [Insert Contractor POC Name]:

In accordance with Federal Acquisition Regulation (FAR) clause 52.242-14, Suspension of Work, of the referenced contract, I am issuing a suspension of the work you perform for the Department of the Interior (DOI). In the absence of either a Fiscal Year 2014 appropriation or a continuing resolution for DOI, no further financial obligations may be incurred by DOI except for those related to the orderly suspension of DOI's operations or performance of excepted or emergency activities.

You are hereby ordered to suspend all work on the referenced contract effective [insert time, date, and local time zone], except for the following activities:

[None, or itemize by line items, task or delivery order, etc, with narrative description of the specific work exempted from the shutdown, and include the following paragraph if applicable:

If any contract activities are performed at a DOI facility, provide me, or if I am not available, one of the contacts listed below, a list of the names of contractor employees who will be performing work on-site, and will require access to a certain DOI facility. Individuals whose names are not on the list will not be granted access to the DOI facility.]

Within a period of 90 days or any extension to this period for which we have agreed, DOI will either:

1. Cancel the suspension of work; or
2. Terminate the work covered as provided in the termination clause in the contract.

DOI will be unable to process payments during the lapse in appropriations. Do not submit any invoices or other claims for reimbursement until I notify you to do so.

If you have questions regarding this letter, please contact me at [insert CO contact information]
. If I am in furlough status and unavailable, please contact one of the Contracting Officers listed below.

[Insert Non-furloughed CO #1: Name, phone number, e-mail]

[Insert Non-furloughed CO #2: Name, phone number, e-mail]

[Insert Non-furloughed CO #3: Name, phone number, e-mail]

Sincerely,

[Insert Name]
Contracting Officer
Department of the Interior

[Insert Date]

[Insert Contractor POC Name]

[Insert Contractor POC Title]

[Insert Contractor Name]

[Insert Contractor Address]

SUBJECT: Stop-Work Order

Re: [Insert Contract Number]

Dear [Insert Contractor POC Name]:

In accordance with Federal Acquisition Regulation (FAR) clause 52.242-15, Stop-Work Order, of the referenced contract, I am ordering a suspension of the work you perform for the Department of the Interior (DOI). In the absence of either a Fiscal Year 2014 appropriation or a continuing resolution for DOI, no further financial obligations may be incurred by DOI except for those related to the orderly suspension of DOI's operations or performance of excepted or emergency activities.

You are hereby ordered to suspend all work on the referenced contract effective [insert time, date, and local time zone], except for the following activities:

[None, or itemize by line items, task or delivery order, etc, with narrative description of the specific work exempted from the shutdown, and include the following paragraph if applicable:

If any contract activities are performed at a DOI facility, provide me, or if I am not available, one of the contacts listed below, a list of the names of contractor employees who will be performing work on-site, and will require access to a certain DOI facility. Individuals whose names are not on the list will not be granted access to the DOI facility.]

Within a period of 90 days or any extension to this period for which we have agreed, DOI will either:

1. Cancel the suspension of work; or
2. Terminate the work covered as provided in the termination clause in the contract.

If this temporary suspension results in an increase in the time required for, or in your cost properly allocable to, the performance of any part of the referenced contract, you must assert your right to an adjustment in writing within 30 days from the date of the receipt of the notification that the suspension has been lifted, but in no case after final payment under this

contract.

If DOI should cancel the stop-work order or the period of the order or any extension expires, you shall resume work.

DOI will be unable to process payments during the lapse in appropriations. Do not submit any invoices or other claims for reimbursement until I notify you to do so.

If you have questions regarding this letter, please contact me at [insert CO contact information]. If I am in furlough status and unavailable, please contact one of the Contracting Officers listed below.

[Insert Non-furloughed CO #1: Name, phone number, e-mail]

[Insert Non-furloughed CO #2: Name, phone number, e-mail]

[Insert Non-furloughed CO #3: Name, phone number, e-mail]

Sincerely,

[Insert Name]
Contracting Officer
Department of the Interior

[Insert Date]

[Insert Contractor POC Name]

[Insert Contractor POC Title]

[Insert Contractor Name]

[Insert Contractor Address]

SUBJECT: Continuation of Work in Absence of Fiscal Year 2014 Appropriation

Re: [Insert Contract Number]

Dear [Insert Contractor POC Name]:

The purpose of this memorandum is to inform you of the continuation of work you perform for the Department of the Interior (DOI) in the absence of either a Fiscal Year 2014 appropriation or a continuing resolution for the DOI.

The referenced contract is either considered essential to the orderly suspension of operations or is considered an emergency or excepted activity. Therefore, all work under the referenced contract must continue in the absence of an FY 2014 appropriation or a continuing resolution.

If any contract activities are performed at a DOI facility, provide me, or if I am not available, one of the contacts listed below, a list of the names of contractor employees who will be performing work on-site, and will require access to a certain DOI facility. Individuals whose names are not on the list will not be granted access to the DOI facility.

DOI will be unable to process payments during the lapse in appropriations. Do not submit any invoices or other claims for reimbursement until I notify you to do so.

If you have questions regarding this letter, please contact me at [insert CO contact information]. If I am in furlough status and unavailable, please contact one of the Contracting Officers listed below.

[Insert Non-furloughed CO #1: Name, phone number, e-mail]

[Insert Non-furloughed CO #2: Name, phone number, e-mail]

[Insert Non-furloughed CO #3: Name, phone number, e-mail]

Sincerely,

[Insert Name]
Contracting Officer
Department of the Interior

[Insert Date]

[Insert Contractor POC Name]

[Insert Contractor POC Title]

[Insert Contractor Name]

[Insert Contractor Address]

SUBJECT: Cancellation of Suspension of Work

Re: [Insert Contract Number]

Dear [Insert Contractor POC Name]:

In accordance with Federal Acquisition Regulation (FAR) clause 52.242-14, Suspension of Work, of the referenced contract, I am canceling the suspension of work that was effective [insert time, date, and local time zone]. You are hereby directed to resume work as of [insert time, date, and local time zone].

DOI will resume operations and be able to process payments again effective [insert time, date, and local time zone]. Invoices or other claims for reimbursement may be submitted after that date and time.

If you have questions regarding this letter, please contact me at [insert CO contact information].

Sincerely,

[Insert Name]

Contracting Officer

Department of the Interior

[Insert Date]

[Insert Contractor POC Name]

[Insert Contractor POC Title]

[Insert Contractor Name]

[Insert Contractor Address]

SUBJECT: Cancellation of Stop-Work Order

Re: [Insert Contract Number]

Dear [Insert Contractor POC Name]:

In accordance with Federal Acquisition Regulation (FAR) clause 52.242-15, Stop-Work Order, of the referenced contract, I am canceling the stop-work order that was effective [insert time, date, and local time zone]. You are hereby directed to resume work as of [insert time, date, and local time zone].

Under the terms of the Stop-Work clause of your contract, you may assert your right to an equitable adjustment within thirty (30) calendar days after resumption of work. Accordingly, you should submit any request for equitable adjustment to me in writing at [insert CO email and mailing address].

DOI will resume operations and be able to process payments again effective [insert time, date, and local time zone]. Invoices or other claims for reimbursement may be submitted after that date and time.

If you have questions regarding this letter, please contact me at [insert CO contact information].

Sincerely,

[Insert Name]

Contracting Officer

Department of the Interior

Background Information on Shutdown

Privileged Deliberative
Communication

What causes a shutdown?

A shutdown occurs when there is a lapse in appropriations. The lapse has an impact on those agencies, and those programs/activities, that were funded by the appropriation which lapsed.

Thus, if an agency has other separate, pre-existing appropriations, these other appropriations continue to remain available to support the activities which they fund. Examples are indefinite appropriation (e.g., the permanent law that provides for the payment of Social Security retirement benefits) and carryover balances from a multi-year appropriation in a prior fiscal year.

History of shutdowns.

Prior to FY 1996, there were short shutdowns in 1981, 1982, 1983, 1984, 1986, 1987 and 1990. These ranged from several hours to three days (and, in several cases, entirely on a weekend). In FY 1996, there were two shutdowns, neither of which was government-wide. The first affected many agencies and lasted for five days, beginning with the CR's lapse on November 14, 1995, and ending on November 19, 1995, with the enactment of another CR. According to a CRS report, an estimated 800,000 federal employees had been furloughed. A few weeks later, there was a second shutdown, affecting fewer agencies. This shutdown ran for 21 days, beginning with the CR's lapse on December 16, 1995, and ending on January 6, 1996, with the enactment of another CR (funding for some activities had been provided on December 22 and January 4). According to CRS, an estimated 284,000 federal employees were furloughed as of January 2, with another 475,000 employees continuing to work on "excepted" activities.

Agency "shutdown plans," which are based on DOJ opinions and OMB guidance.

During a shutdown, a Federal agency operates under its "shutdown plan." OMB has required agencies to maintain such plans since 1980. An agency prepares its plan by applying, to its programs and activities, the general principles outlined in DOJ opinions and OMB guidance.

- The key DOJ opinions are:
 - OLC opinion of August 16, 1995, *Government Operations in the Event of a Lapse of Appropriations*
 - AG opinion of January 16, 1981, *Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations* (Civiletti opinion)
- The key OMB guidance documents are:
 - Circular A-11, Section 124, *Agency Operations in the Absence of Appropriations*
 - Memorandum of November 17, 1981, *Agency Operations in the Absence of Appropriations*

- OMB Bulletin 80-04 of August 28, 1980, *Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations*

The Antideficiency Act; “excepted” activities versus “non-excepted” activities

The key statute is the Antideficiency Act (ADA, 31 U.S.C. 1342), which provides that:

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

Those Federal activities that are authorized to continue, during a funding lapse, are “excepted” activities. Those activities which may not continue are “non-excepted.”

Agency employees that perform “non-excepted” activities may not perform any services, except for those involved in the “orderly shutdown” of non-excepted activities at the beginning of the funding lapse (under Circular A-11, if an agency estimates that “more than one-half day would be needed to complete a shutdown,” the agency must “submit policy statements and legal opinions supporting those estimates”). In addition, agencies may not permit the voluntary performance of non-excepted activities.

In the case of “excepted” activities, an agency may enter into an obligation for the activity to be carried out, but the agency may not expend funds during the shutdown in order to liquidate the obligation. The obligation can be paid only when an appropriation has been enacted.

Example: In the case of “excepted” activities, the agency may continue to have agency employees perform the “excepted” work. Thus, the agency may continue to incur the obligation to pay the employees for the “excepted” work. However, the agency cannot pay the employees for that “excepted” work until an appropriation is enacted. (Thus, whether employees would miss a paycheck would depend on the length of the shutdown.)

What are “excepted” activities under the ADA?

There are two main categories of “excepted activities”: activities that are “authorized by law” and those involving “the safety of human life or the protection of property.” Below are OLC’s descriptions of these activities from its opinion of August 16, 1995.

1. Activities “authorized by law.”

A. Express authorization: contract authority and borrowing authority.

“Congress provides express authority for agencies to enter into contracts or to borrow funds to accomplish some of their functions. An example is the ‘food and forage’ authority given to the Department of Defense, which authorizes contracting for necessary clothing, subsistence, forage, supplies, etc. without an appropriation. In such cases, obligating funds or contracting can continue, because the Antideficiency Act does not bar such activities when they are authorized by law. As the 1981 Opinion emphasized, the simple authorization or even direction to perform a certain action that standardly can be found in agencies’ enabling or organic legislation is insufficient to support a finding of express authorization or necessary implication . . . , standing alone. There must be some additional indication of an evident intention to have the activity continue despite an appropriations lapse.”

B. Necessary implications: authority to obligate that is necessarily implied by statute.

“The 1981 Opinion concluded that the Antideficiency Act contemplates that a limited number of government functions funded through annual appropriations must otherwise continue despite a lapse in their appropriations because the lawful continuation of other activities necessarily implies that these functions will continue as well.

“Examples include the check writing and distributing functions necessary to disburse the social security benefits that operate under indefinite appropriations.

“Further examples include contracting for the materials essential to the performance of the emergency services that continue under that separate exception.

“In addition, in a 1980 opinion, Attorney General Civiletti opined that agencies are by necessary implication authorized ‘to incur those minimal obligations necessary to closing [the] agency.’ The 1981 opinion reiterated this conclusion and consistent practice since that time has provided for the orderly termination of those functions that may not continue during a period of lapsed appropriations.”

C. Obligations necessary to discharge of the President’s constitutional duties and powers.

“Efforts should be made to interpret a general statute such as the Antideficiency Act to avoid the significant constitutional questions that would arise were the Act read to critically impair the exercise of constitutional functions assigned to the executive. In this regard, the 1981 Opinion noted that when dealing with functions instrumental in the discharge of the President’s constitutional powers, the ‘President’s obligational authority . . . will be further buttressed in connection with any initiative that is consistent with statutes -- and thus with the exercise of legislative power in an area of concurrent authority -- that are more narrowly drawn than the Antideficiency Act and that would otherwise authorize the President to carry out his constitutionally assigned tasks in the manner he contemplates.’ 1981 Opinion, at 6-7.”

Note: In its opinion of September 15, 1995 (*Authority to Employ the Services of White House Employees During an Appropriations Lapse*), OLC concluded that the White House Office could employ individuals on a non-salaried (voluntary) basis to perform “non-expected” activities during a lapse in the White House appropriation.

2. “Emergencies involving the safety of human life or the protection of property.”

As noted above, an agency may incur obligations (but may not expend funds) in order to address “emergencies involving the safety of human life or the protection of property.”

In 1990, Congress addressed the “emergency” category by adding the following sentence to the ADA:

“As used in this section, the term ‘emergencies involving the safety of human life or the protection of property’ does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.”

In its 1995 opinion, OLC concluded that the 1990 amendment “prohibits overly expansive interpretations of the ‘emergency’ exception.” In 1995, OLC reviewed the test that had been set forth in the 1981 AG opinion – for identifying “life and property” emergencies – in light of the 1990 amendment. OLC concluded that the 1981 test should be revised by replacing “in some degree” with “in some significant degree,” so that it would read as follows:

“First, there must be some reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property. Second, there must be some reasonable likelihood that the safety of human life or the protection of property would be compromised, in some significant degree, by delay in the performance of the function in question.”

As OLC explained, the 1990 amendment “emphasize[s] and reinforce[s] the requirement that there be a threat to human life or property of such a nature that immediate action is a necessary response to the situation.” To illustrate the point, OLC provided an example:

“The brief delay of routine maintenance on government vehicles ought not to constitute an ‘emergency,’ for example, and yet it is quite possible to conclude that the failure to maintain vehicles properly may ‘compromise, to some degree’ the safety of the human life of the occupants or the protection of the vehicles, which are government property. We believe that the revised articulation [requiring ‘some significant degree’] clarifies that the emergencies exception applies only to cases of threat to human life or property where the threat can be reasonably said to be near at hand and demanding of immediate response.”

Under Circular A-11, if an agency estimates that “the number of employees to be retained to protect life and property would exceed five percent of the number of employees on-board at the

} 5%

beginning of a hiatus less those exempt," the agency must "submit policy statements and legal opinions supporting those estimates."

Should an agency assume that the private economy will continue operating?

In its 1995 opinion, OLC addressed the question of "whether the emergency status of government functions should be determined on the assumption that the private economy will continue operating during a lapse in appropriations, or whether the proper assumption is that the private economy will be interrupted. As an example of the difference this might make, consider that air traffic controllers perform emergency functions if aircraft continue to take off and land, but would not do so if aircraft were grounded." OLC explained that, "with respect to any short lapse in appropriations, the practice of past administrations has been to assume the continued operation of the private economy, and so air traffic controllers, meat inspectors, and other similarly situated personnel have been considered to be within the emergency exception of § 1342." OLC, though, further explained that "[t]he correct assumption in the context of an anticipated long period of lapsed appropriations, where it might be possible to phase in some alternatives to the government activity in question, and thus over time to suspend the government function without thereby imminently threatening human life or property, is not entirely clear."

Examples of "excepted" activities that may continue during a funding lapse.

Based on the above principles, OLC and OMB have outlined several examples of "excepted" activities that may continue during a funding lapse.

In its 1995 opinion, OLC stated that it "is an entirely inaccurate description" to refer to a funding lapse as "shutting down the government." To illustrate this point, OLC outlined a number of Federal activities that are not required to cease but rather may continue during a funding lapse:

"Were the federal government actually to shut down, air traffic controllers would not staff FAA air control facilities, with the consequence that the nation's airports would be closed and commercial air travel and transport would be brought to a standstill.

"Were the federal government to shut down, the FBI, DEA, ATF and Customs Service would stop interdicting and investigating criminal activities of great varieties, including drug smuggling, fraud, machine gun and explosives sales, and kidnapping.

"The country's borders would not be patrolled by the border patrol, with an extraordinary increase in illegal immigration as a predictable result.

"In the absence of government supervision, the stock markets, commodities and futures exchanges would be unable to operate.

"Meat and poultry would go uninspected by federal meat inspectors, and therefore could not be marketed.

“Were the federal government to shut down, medicare payments for vital operations and medical services would cease. VA hospitals would abandon patients and close their doors.”

Again, as noted above, OLC offered these as examples of Federal activities that may continue.

In addition, in its November 1981 memorandum to agencies, OMB provided the following list of activities that may continue:

1. Provide for the national security, including the conduct of foreign relations essential to the national security or the safety of life and property.
2. Provide for benefit payments and the performance of contract obligations under no-year or multi-year or other funds remaining available for those purposes.
3. Conduct essential activities to the extent that they protect life and property, including:
 - a. Medical care of inpatients and emergency outpatient care;
 - b. Activities essential to ensure continued public health and safety, including safe use of food and drugs and safe use of hazardous material;
 - c. The continuance of air traffic control and other transportation safety functions and the protection of transport property;
 - d. Border and coastal protection and surveillance;
 - e. Protection of Federal lands, buildings, waterways, equipment and other property owned by the United States;
 - f. Care of prisoners and other persons in the custody of the United States;
 - g. Law enforcement and criminal investigations;
 - h. Emergency and disaster assistance;
 - i. Activities essential to the preservation of the essential elements of the money and banking system of the United States, including borrowing and tax collection activities of the Treasury;
 - j. Activities that ensure production of power and maintenance of the power distribution system; and
 - k. Activities necessary to maintain protection of research property.

FY 14 Office of Acquisition and Property Management

Government Shutdown Questions and Answers

Contracting Before, During and After the Shutdown; Systems and Reporting; Charge Card; Financial Assistance; Suspension and Debarment; Fleet

CONTRACTING BEFORE THE SHUTDOWN

1. What generally happens in the event of a lapse in appropriations and shutdown and what are key exceptions?

In general, federal government activities that are not essential (i.e., necessary for the safety or human life and the protection of property or otherwise authorized by law) must cease. That means employees, contractors and cooperators:

- cannot work,
- cannot create new obligations,
- cannot make payments for funded obligations,
- cannot volunteer (employees, contractors, or cooperators, etc.)

That is, unless “authorized by law,” the Anti-Deficiency Act prohibits the federal government from obligating funds before an appropriations measure has been enacted and also from accepting “voluntary services.” See 31 U.S.C. §§ 1341 and 1342. In addition to prohibiting contract work from continuing after a shutdown, if federal staff members continue working when it is unclear that there will be an appropriation covering their salaries, this also could violate the prohibition.

The Act provides an exception for “emergencies involving the safety of human life or the protection of property.” However, “emergencies involving the safety of human life and the protection of property” do not “include the ongoing, regular functions of government, the suspension of which would not imminently threaten the safety of human life or the protection of property.” See 31 U.S.C. § 1342.

Also, a shutdown generally does not apply to activities funded by obligations validly incurred in an earlier fiscal year or by multi-year or indefinite appropriations. Accordingly, contracts that were previously funded by prior enacted appropriations may continue.

2. What are some general guidelines?

Here are a few guidelines to consider:

- If a contract or payment is needed to support an essential program like medicare or earthquake hazard monitoring, then supporting staff (e.g., contracting officer, COR/COTR, finance staff) are essential. They may or may not be needed on a full-time basis.
- If a contract is already funded, such as a construction contract, then:
 1. The COR/COTR/ Inspector may be called in intermittently to monitor the contractor's progress
 2. The CO may be called in intermittently to issue necessary contract modifications, which may include a suspension of work order if staff to monitor the contractor's progress cannot be made available
 3. Bureaus should combine as many of these duties as possible to a small number of people
 4. Invoices for these contracts will not be processed until appropriations are available to fund the administrative support
- If a contract supports an activity that is not funded by prior appropriations and not essential, such as a NPS maintenance or repair contract, then the staff who support the contract are not essential.
- Processing payments/authorizing drawdowns for grants or cooperative agreements is not an essential activity.

3. What actions should a contracting officer take if there is a shutdown?

Contracting Officers (COs) should review all of their contracts to ensure that they include the following Federal Acquisition Regulation (FAR) clauses:

- **Termination for the Convenience of the Government** clause in FAR 52.249-1 through 5, as appropriate; **and** either
- **Suspension of Work** clause in FAR 52.242-14 (mandatory in fixed price construction and architect-engineering contracts); **or**
- **Stop-Work Order** clause in FAR 52.242-15 (optional in contracts for supplies, services, or research and development)

Terminations for convenience, stop-work orders, and suspension orders may be issued only if the contracts contain the appropriate clause. When appropriate, stop-work and suspension orders are preferable to terminations because they keep the contract active and avoid termination costs as well as the need for a re-procurement action.

If the above clauses are not already included in the contract, then the contracts should be modified on a bilateral basis to incorporate the appropriate clause(s). This should be done as a precaution to protect the Government's interests regardless of whether the contract supports an essential activity.

COs may draft stop-work and suspension of work templates in advance for possible use in contracts that are not already funded or do not support essential activities. For example, a stop-work order may need to be issued for non-essential contractor support services that will be suspended if a government facility is shut down and its federal employees are furloughed.

4. What must a contracting activity do in order to shutdown?

Bureau Contingency Plans must designate shutdown personnel, who will facilitate orderly shutdown of the contracting activities, including drafting and issuing of stop-work orders and other steps outlined in this guidance. Once the services of these employees are no longer required, they will be furloughed. The Office of Management and Budget may place a time limit on shutdown activities. Bureau Contingency Plans must identify essential activities and functions of the bureau that must continue during a lapse in appropriations, and identify contracts supporting those activities and functions. Work on those contracts can continue during the shutdown, and the bureau must identify any essential personnel, such as warranted COs and/or contracting officer's representatives, required during the shutdown in order to administer those contracts.

Work on contracts that are not funded by a lapsing appropriation (such as the fiscal year 2014 continuing resolution), such as projects that are fully funded, may continue, provided government oversight is not necessary to facilitate performance during the shutdown.

Contracting activity shutdown personnel must issue Stop Work or Suspension of Work orders on, or Terminate for the Convenience of the Government, all non-essential contracts funded by the 2014 continuing resolution, in accordance with FAR procedures. Once this work is completed, if the employees do not have responsibility for other essential work, they must cease work until recalled.

5. What communications with contractors are allowed?

Contractors may inquire about the status of their contracts prior to the shutdown. Contractors should be told that they will be notified in writing whether their contracts are affected by the shutdown.

If a determination is made that work must cease on a non-essential contract, then you may not suggest that the contractor continue to work, allow them to volunteer their services, or suggest that if they continue working they will be paid retroactively.

CONTRACTING DURING THE SHUTDOWN

6. Do federal and agency policies and guidance (such as FAR, DIAR, DIAPRs, DIGs) apply to contracting during shutdown?

Yes.

7. Who has contracting authority during a shutdown?

Only warranted contracting officers have authority to sign contract actions.

8. Can I award new contracts?

A contract may be awarded during a lapse in appropriation **ONLY** if it is for goods and services that are deemed essential in accordance with your Bureau Contingency Plan for a Possible Lapse in Appropriations. Under authority of the Anti-Deficiency Act, contracting officers may obligate the Government for shutdown and essential activities even in the absence of an appropriation. However, contractors may not be paid until appropriations are enacted if processing of the payment requires government input.

That is, as noted, the Anti-Deficiency Act, 31 U.S.C. § 1342, provides that officers and employees of the federal government may accept voluntary services where there is (1) a reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property, and (2) some reasonable likelihood that the safety of human life or the protection of property would be compromised in some significant degree by delay in the performance of the function in question. See Memorandum to Alice Rivlin, Director, Office of Management and Budget, from Assistant Attorney General, Office of Legal Counsel, Re Government Operations in the Event of a Lapse in Appropriations (August 6, 1995); <http://www.opm.gov/furlough/furlough.asp#Appendix%20A-1>

Multi-year or other contracts that require newly obligated funds cannot be awarded. Contracts obligated with previous years' funds are unaffected by a lapse in appropriations because they do not require a new obligation. Contract extensions, exercise of renewal options, or any other new contract may not be executed unless supporting essential activities or functions.

For solicitations where a bid/proposal acceptance period is impacted, COs should issue a bilateral amendment with the vendor(s) involved to reestablish a new acceptance period to ensure further contract award evaluation is possible after appropriations are authorized.

9. What about inspection/acceptance and receipt of deliverables?

During the shutdown, Federal government offices are closed. Only employees designated by their bureau/office to perform essential services or those funded by non-lapsing appropriations will report to work. Therefore regular deliveries of supplies and services shall be suspended until the conclusion of the shutdown. Contractors should be informed of the shutdown and instructed not deliver goods or services until the conclusion of the shutdown. As with all correspondence, the contract files should document the telephone calls and emails between the contracting officer and the contractor. If a shutdown occurs, larger or more sensitive contracts should be modified to revise the delivery schedule for non-essential goods and services.

Inspection and acceptance should be completed if at all possible before the shutdown occurs. If this cannot be accomplished, contractors should be informed of the shutdown circumstance and informed that the inspection/acceptance procedures will be continued only after appropriations are enacted but will be extended by the additional number of days that the shutdown continues. Extended inspection and acceptance periods beyond the terms of the contract may not relieve the government of its prompt pay responsibilities.

10. What if there is an emergency during the shutdown that requires contracting support?

Bureau contingency plans must cover the possibility that an emergency could occur during the shutdown that requires contracting support, such as a fire or other natural disaster. Bureau plans must designate contracting personnel, such as contracting officers and contracting officer's representatives, to be in on-call status in case they are needed to come to work during the shutdown to provide support in an emergency.

11. How will contractors communicate with Interior during the shutdown?

Only employees identified by their bureaus to perform essential services will be on hand to communicate with contractors during a government shutdown involving a lapse in appropriations. Each bureau must have a list of otherwise-essential personnel that contractors may contact in its Bureau Contingency Plan. Contracting staff may not be deemed essential only for purposes of providing this communications point of contact.

**CONTRACTING
AFTER THE SHUTDOWN**

12. What happens after the shutdown, when Interior resumes operations?

Contracting Officers must cancel stop-work and suspension of work orders, and modify contracts, as appropriate, to provide available funds. Additionally, COs should follow the

appropriate settlement procedures in FAR Part 49 for contracts terminated in whole or partially for the convenience of the Government.

SYSTEMS AND REPORTING

Contract Action Reporting (FPDS: Federal Procurement Data System – Next Generation)

13. Must I report contract actions during the shutdown?

Yes. If you award an action to support an essential activity you must report contract actions to the FPDS in accordance with FAR 4.6, and DIAPR 2008-08.

14. Will FPDS Support be available during the shutdown?

Yes. If you have issues reporting contract actions to FPDS you may contact the FPDS Support desk at 703-390-5360, or via email at fpdssupport@gcefederal.com.

Other Acquisition Systems

15. Will SAM, FBO, ESRS, FSRS, FBO, PPIRS, CPARS, be available during the shutdown?

Yes, those government-wide systems will be available to support essential activities. If you need assistance with SAM, eSRS, FBO, or FSRS there are several ways you can get help. Please visit <https://www.fsd.gov/app/about> to choose the way you would prefer to get assistance. If you need assistance with PPIRS you should visit their websites for additional information. Links to all of these systems can be found at <https://www.acquisition.gov/>.

16. Must I use these systems during the shutdown?

Yes, If you are identified as essential and supporting essential activities during the shutdown, FAR and other Federal and Departmental policy will still apply as it relates to the procurement process, and the use of these systems.

CHARGE CARD

17. Will the GSA SmartPay Card function during a shutdown?

The purchase, travel, fleet, integrated and cardless products will all continue to operate normally and that the banks will continue to provide service in accordance with the GSA

SmartPay 2 Master Contract. A/OPCs should remind cardholders that during a lapse in appropriations, GSA SmartPay cards may only be used to support essential functions or activities that are not funded by lapsed appropriations.

18. Will the travel charge cards still function, too?

Yes. The travel card will still function and vehicles can still be fueled using the fleet card, so no one will be “marooned” due to a non-functioning card. Travelers are required to pay their charge card bills whether or not their travel voucher has been paid.

19. What about automatic payments?

Cardholders should pay particular attention to “automatic” payments they have established with vendors using their purchase cards. In order to prevent purchases that are not proper under a shutdown from occurring, A/OPCs and cardholders may need to review these scheduled payments and take action to halt them, if appropriate.

20. Where can I find additional information about Charge Card during a shutdown?

GSA will be posting FAQs on its SmartPay website: <https://smartpay.gsa.gov/blogs/Program-Updates>.

FINANCIAL ASSISTANCE

21. How does a Federal government shutdown impact discretionary financial assistance programs?

For financial assistance programs that are funded through annual appropriations, a Federal shutdown will cause a funding gap and a curtailment of bureau/office activities and services. During a lapse in appropriations, new program announcements shall not be posted on Grants.gov, new grant or cooperative awards may not be issued, the execution of new agreements may not be conducted, no renewals or amendments to add funds to a program/project are allowed, and staff may not obligate funds. All new discretionary activities must cease until a new appropriation is enacted by Congress.

The Anti-Deficiency Act prohibits Federal staff from obligating funds before an appropriations measure has been enacted, except as authorized by law.

The Act provides an exception for “emergencies involving the safety of human life or the protection of property.” However, “emergencies involving the safety of human life and the protection of property” do not “include the ongoing, regular functions of government, the suspension of which would not imminently threaten the safety of human life or the protection of property.” See 31 U.S.C. § 1342.

Federal financial assistance programs that were previously funded by the American Recovery and Reinvestment Act, Hurricane Sandy relief funding, or prior enacted appropriations may continue.

22. How does a lapse in appropriations impact mandatory or earmark spending programs?

Programs funded by non-lapsing appropriations may or may not be impacted by a Federal government shut-down caused by a lapse in appropriations. For example, although the funds needed to make disbursements to beneficiaries may be available automatically through electronic payment systems, pursuant to permanent appropriations, the payments may be processed by employees who are paid with funds provided in annual appropriations. In such a situation, the function of the mandatory program would cease until appropriations were enacted to the salaries of administering employees. Staff administrative planning and oversight of Federal financial assistance programs would cease unless the activities were determined to meet emergency activities and receive management approval.

The program activity for the recipients of mandatory or earmark spending programs that have permanent monies and are funded by laws other than annual appropriations would continue their implementation.

23. Are there financial assistance activities where staff and support services are necessary to continue financial assistance essential services that may involve staff oversight and/or cooperative agreement substantial involvement (e.g. considered essential to protect the safety of human life and property)?

There may be, but bureaus must identify such activities and related personnel and determine that the emergency threshold is met. A non-exclusive list of examples of financial assistance functions to conduct essential activities to the extent that they protect life and property include:

- (i) Activities essential to ensure public health and safety, including safe use of food, drugs, and safe use of hazardous materials;
- (ii) Protection of Federal lands, buildings, waterways, equipment and other property owned by the United States government;
- (iii) Law enforcement;
- (iv) Emergency and disaster assistance;
- (v) Activities that ensure the production of power and maintenance of the power distribution system; and

(vi) Activities necessary to maintain the protection of research property.

24. If a financial assistance program does not meet the threshold for protection of life and property, should substantial involvement in the project activities (i.e., cooperative agreements) by employees continue?

Federal involvement and technical assistance activities must cease during the furlough of employees during a Federal shutdown. When the Federal government resumes business upon enactment of appropriations, agency involvement may resume and the agency may negotiate with recipient(s) for a no cost extension to revise the implementation timeline of the project.

SUSPENSION AND DEBARMENT

25. For any Federal procurement or nonprocurement award activities which may be carried out during a Federal shutdown, must the provisions of FAR 9.4 and 2 CFR Part 180 still be followed?

Yes. Any new awards that are made to support essential activities must only be made to responsible vendors or recipients.

FLEET

26. What happens in the event of a government shutdown for non-essential fleet management operations? i.e., non-law enforcement, security and emergency response.

In the event of a government shutdown, all non-essential fleet management operations and uses of Departmental, both owned and GSA-leased, vehicles must cease until such time as the government commences operations and funding. Immediately upon notification of a lapse of appropriations, employees using government vehicles for non-essential operations should return all DOI provided vehicles to a government provided parking facility. Additionally, employees should return all government provided fleet cards and keys to a secure government location for the duration of the shutdown.

27. What happens if I am using a government provided vehicle for travel during a shutdown?

DOI employees on TDY travel must follow the guidance provided by the Office of Financial Management regarding official travel. As it relates to the government provided vehicle, if the travel is non-essential, the employee must return the vehicle, keys, and fleet card to the appropriate government facility until the government shutdown ends. Only travel for essential activities will be allowed during a shutdown.

28. What if I have authorization for home-to-work use during a shutdown?

In the event of a government shutdown, all non-essential home-to-work authorizations are suspended. The authorizations will immediately go back into effect after the shutdown ends.

29. Can I use the Government Fleet card during a shutdown?

Government provided fleet cards are only to be used for essential fleet management operations as determined in advance by your bureau/office, such as law enforcement, security, and emergency response. Uses for non-essential operation are not permitted during a shutdown, with the exception of using the fleet card to return vehicles to a government facility immediately upon notification of a lapse of appropriations.



Lapse of Appropriation Human Resource Furlough Questions and Answers

The answers to these questions generally apply to a situation where the Agency implements a shutdown or emergency furlough due to a temporary lapse in appropriations. These questions and answers augment those provided in the Office of Personnel Management's (OPM) Guidance and Information on Furloughs, which can be found at:

<http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough>

GENERAL ADMINISTRATION

1. What is a furlough?

A furlough is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

2. Under what authority is a furlough taken?

There are three legal authorities under which a furlough can be taken. Furloughs of 30 calendar days or less are covered under adverse action procedures found in Subpart D of 5 CFR 752. Furloughs of more than 30 calendar days are covered under reduction in force procedures found in Subpart B of 5 CFR 351. Furloughs for Senior Executive Service (SES) members are covered Subpart H of 5 CFR Part 359. Furloughs may also be taken because of a sudden emergency requiring curtailment of the agency's activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404 (d) (2) and in accordance with 5 CFR 359.806 (a) for SES Career appointees.

3. What happens to time limited appointments that expired during a furlough?

Furloughs do not extend the time limits for temporary (5 CFR 316.401(c)) and term (5 CFR 316.301(a)) appointments. If you intend to extend the time limited appointment, it may be

extended prior to the furlough or, the individual may be reappointed after the furlough in accordance with 5 CFR 316.401(c) or 5 CFR 316.302(b) (7).

4. How come some employees continue working when the agency implements a furlough.

Under guidance provided the Office of Management and Budget and the Office of Personnel Management, when an agency implements a furlough due to a temporary lapse in appropriations an agency may be required to maintain some level of operations in order to carry out activities required by law and activities to protect safety of human life or protection of property. These essential activities are referred to as excepted activities and require personnel to carry out the business of the agency.

5. Will I receive advance written notice of a furlough?

Not necessarily. While an employee must ultimately receive a written notice of decision to furlough, it is not required that written notice be given before the furlough starts. OPM does say prior written notice is "preferable," but when it is not possible, then any reasonable notice - such as a phone call or verbal communications - is allowed.

6. Who is excepted from a furlough?

In the context of a shutdown furlough, "excepted employees" refers to employees who are excepted from a furlough by law because they are (1) performing emergency work involving the safety of human life or the protection of property, (2) involved in the orderly suspension of agency operations, or (3) performing other functions exempted from the furlough.

An excepted employee is not the same as an "**emergency employee**," which refers to those employees who must report for work in emergency situations, such as severe weather conditions, air pollution, power failures, interruption of public transportation, and other situations in which significant numbers of employees are prevented from reporting for work or which require agencies to close all or part of their activities.

7. Can I take another job while furloughed?

Even while on furlough, you are still a government employee and must still abide by standards of ethical conduct and other rules regarding outside employment. In addition, there are specific statutes which prohibit certain outside activities, and agency-specific supplemental rules that require prior approval of, and sometimes prohibit, outside employment. Therefore, before engaging in outside employment, employees should review these regulations and then consult their agency ethics official to learn if there are any agency-specific supplemental rules governing the employee.

8. Are Presidential appointees subject to a furlough?

Appointees are NOT subject to furlough by virtue of their status per 5 U.S.C. 6301 (2)(x) or (xi) and 5 CFR 630.211. There is an exception - Former career Senior Executive Service appointees who took appointments at level V of the Executive Schedule or higher and elected to retain SES leave benefits under 5 U.S.C. 3392(c), are subject to furlough at the discretion of the agency.

Presidential appointees, certain IPA assignments, and employees on reimbursable details to other agencies are excluded from furlough action.

9. If I am on a detail or assigned outside my agency, am I subject to a furlough?

Employees on a reimbursable detail from the agency would not be subject to furlough due to lack of funds if full reimbursement continued. If reimbursement were reduced or eliminated, the employee would be subject to furlough. Federal employees assigned to non-federal organizations who are on leave without pay from their federal positions may continue working.

LEAVE

10. If an employee who received a furlough notice had previously scheduled annual or sick leave, what happens to the scheduled leave?

Upon furlough, all scheduled leave is canceled (annual leave, sick leave, military leave, court leave or other). Absences during the furlough may not be charged to leave. The Antideficiency Act (31 U.S.C. 1341 et seq.) does not allow authorization of any expenditure or obligation before an appropriation is made, unless authorized by law. Paid leave creates a debt to the government that is not authorized by the Act. Therefore, agencies are instructed that during a lapse in appropriations, all paid leave during a furlough must be canceled and employees must be either (1) at work performing excepted activities or (2) furloughed.

11. May employees who were designated as excepted from the furlough be granted paid leave?

No. If an excepted employee is unavailable to be at work and perform the duties determined by the employing agency to be allowable activities, then the employee must be furloughed.

12. If an employee who would be furloughed is on approved leave without pay (LWOP) must the LWOP be terminated and the employee furloughed?

No. The status of employees in LWOP is not disturbed unless there is indication that the employee may return from the LWOP during the furlough.

PAY

13. Will I receive back pay for the period of time I am subject to a furlough ?

Congress would have to pass legislation granting federal employees the pay they missed while they were furloughed. This is what has happened in the past, but there is no guarantee it will happen again.

14. Can I volunteer to work unpaid during a furlough?

No. Unless otherwise authorized by law, an agency may not accept the voluntary services of an individual.

15. Are contractors located on site also required to not report to work? Or are they allowed to continue their tasks, albeit, without government oversight or monitoring?

Contractors should not "volunteer" their services to an agency during a shutdown if they want to be paid for those services. If, for example, an agency were to suggest to a contractor that they continue working during a shutdown and "we'll figure out how to pay you later," the contractor is at risk of not being able to recover compensation for those services. Agencies may not displace the services of furloughed federal workers by using "volunteer" contractors.

Contractors should also keep in mind that they may not be able to access their work sites if there are no federal employees present to open the building. These are generalities, and details will vary by agency and contract. The best rule of thumb is to discuss these issues with the appropriate agency contracting officer if a shutdown appears to be imminent.

16. How an employee is treated who performs National Guard or Reserve duty while furloughed? Is it a dual compensation situation?

It is not a dual compensation situation because furloughed employees are not in a pay status. They will be compensated by the military and continued to be carried in a LWOP-US status.

BENEFITS

Federal Employees Health Benefits (FEHB)

17. To what extent does non-pay status affect Federal Employee Health Benefits (FEHB) coverage?

The employee's FEHB coverage will continue even if an agency does not make the premium payments on time. Since the employee will be in a non-pay status, the enrollee share of the FEHB premium will accumulate and be withheld from pay upon return to pay status.

18. What happens if I want to cancel my Federal Employee Health Benefits coverage while in a non-pay status in order to avoid the expense?

Unlike other types of non-pay status, employees in a non-pay status due to a lapse of appropriations (shutdown furlough) will not have the opportunity to terminate or cancel FEHB coverage. The employee will remain covered; the enrollee share of the FEHB premium will accumulate and be withheld from pay upon return to pay status.

19. Will an employee continue to be covered under the FEHB program if the agency is unable to make its premium payments on time?

Yes, the employee's FEHB coverage will continue even if an agency does not make the premium payments on time.

Federal Employees Group Life Insurance (FEGLI)

20. To what extent does non-pay status affect Federal Employees Group Live Insurance coverage?

Life insurance coverage continues for 12 consecutive months while in a non-pay status without cost to the employee or the agency. Neither the employee nor the agency incurs a debt during this period of nonpay

Thrift Savings Plan (TSP)

21. To what extent does non-pay status affect Thrift Savings Plan (TSP) coverage?

Deductions will cease for periods of non-pay status where there is insufficient funds to cover the Thrift Savings Plan (TSP) premium(s). Employees cannot contribute to their TSP account while on furlough. Employees should refer to the TSP Fact Sheet – Effect of Non-pay Status on TSP Participation. The fact sheet can be found at:
<https://www.tsp.gov/PDF/formspubs/oc95-4.pdf>

22. Can I obtain a loan from my TSP account while in a non-pay status?

Employees may not obtain a loan from their TSP account while on furlough. For employees with existing TSP Loans, the Internal Revenue Service (IRS) allows your TSP loan payments to be suspended for up to one year of the non-pay period if proper documentation is provided. Interest will accrue while payments are suspended. Employees can make direct payments on their loan from their personal funds while on furlough. For more information on TSP Loans, employees should refer to the TSP Fact Sheet – Effect of Non-pay Status on TSP Participation. The link can be found in Question 22 of this FAQ.

Flexible Spending Account (FSA)

23. To what extent does non-pay status affect Flexible Spending Account (FSA) coverage?

Payroll deductions will cease for any employee that does not receive pay. The employee remains enrolled in FSAFEDS, but eligible health care claims incurred during a non-pay status will not be reimbursed until the employee returns to a pay status and allotments are successfully restarted. The remaining allotments are recalculated over the remaining pay periods to match the participant's election amount. Eligible dependent care expenses incurred during a non-pay status may be reimbursed up to whatever balance is in the employee's dependent care account—as long as the expense incurred during the non-pay status allows the employee (or spouse if married) to work, look for work or attend school full-time. Visit the website, www.fsafeds.com for more information.

Long Term Care (LTC)

24. To what extent does non-pay status affect Long Term Care (LTC) coverage?

Deductions cease when the employee is placed in a non-pay status and there are insufficient funds to cover the premium(s). In order for employees to continue Long Term Care (LTC) coverage, the employee must make payments while in a non-pay status.

Federal Employees Dental and Vision Insurance Plan (FEDVIP)

25. To what extent does non-pay status affect Federal Employees Dental and Vision Insurance Plan (FEDVIP) coverage?

Deductions cease when the employee is placed in a non-pay status and there are insufficient funds to cover the premium(s). In order for employees to continue FEDVIP coverage, the employee must make payments while in a non-pay status.

<http://www.opm.gov/healthcare-insurance/dental-vision/>

Retirement Coverage

26. To what extent does non-pay status affect retirement coverage?

Retirement coverage continues for up to 6 months for periods of where federal employees are normally in a non-pay status per calendar year.

UNEMPLOYMENT COMPENSATION (UC)

27. If I am furloughed am I eligible to receive unemployment compensation benefits. Is the UC claim based on the state where you live, or where you work?

It is possible that furloughed employees may become eligible for unemployment compensation. State unemployment compensation requirements differ. In general, the law of the State in which an employee's last official duty station in Federal civilian service was located will be the State law that determines eligibility for unemployment insurance benefits. (See the Department of Labor website "Unemployment Compensation for Federal Employees" at <http://workforcesecurity.doleta.gov/unemploy/unemcomp.asp>.) Agencies or employees should submit questions to the appropriate State (or District of Columbia) office.

28. Are Human Resources Offices required to provide furloughed Federal employees with an SF-8, Notice to Federal Employee about Unemployment Compensation Insurance? (UC)

Federal agencies are required to provide employees with an SF-8 if they will be in a non-duty status for seven or more days.

29. Is information available as to what the states require before processing a claim for unemployment because of a furlough?

Yes. The list below gives Web sites or instructions for each state when filing an initial claim for unemployment; different procedures often apply when filing claims for additional benefits. You should also note that Kentucky has a Web site – at <http://www.oet.ky.gov/des/ui/staterefguide.asp> - that lists state Web sites, plus telephone numbers, for about 40 states.

Alabama – <http://dir.alabama.gov/uc/Claims/default.aspx>

Alaska – http://www.labor.state.ak.us/esd_unemployment_insurance/biff-splash.htm

Arizona – <https://www.azdes.gov/esa/pdf/UIB-1015APAMNA.pdf>

Arkansas –

http://www.accessarkansas.org/esd/WorkersUnempBenefits/pdf/PDF501_BLANK.pdf

California – <https://eapply4ui.edd.ca.gov/>

Colorado –

<https://wwws.coworkforce.com/ucontinuedclaims/default.asp?ci=0&ps=0&er=0&li=e>

Connecticut – <https://iic.ctdol.state.ct.us/>

Delaware – file through personal application only. Information is at http://www.delawareworks.com/Unemployment/forms/ui_guide-ver0307.pdf

District of Columbia – <https://does.dcnetworks.org/InitialClaims/>

Florida – <https://www2.myflorida.com/apps/uc/fluid/>

Georgia – http://www.dol.state.ga.us/js/unemployment_benefits_individuals.htm

Hawaii – file by phone only, by calling 808 643-5555. Information is at http://hawaii.gov/labor/ui/pdf/STEP-BY-STEPS/claimant_process.pdf

Idaho – <http://cl.idaho.gov/IW/UIClaim/Main.asp?strMenu=FILECLAIM>

Illinois – <http://www.ides.state.il.us/individual/certify/default.asp>

Indiana – <https://uplink.in.gov/CSS>

Iowa – <http://www.iowaworkforce.org/ui/file1.htm#1>

Kansas – <https://www.uibenefits.dol.ks.gov/default.asp>

Kentucky – <http://www.kewes.ky.gov/>

Louisiana – <https://laors.laworks.net/laclaims/website/>

Maine – <https://portalxw.bisoex.state.me.us/mics/>

Maryland – electronic filing not permitted if employee worked for the Federal government in the past 18 months. File by phone at 410 949-0022 in the Baltimore area, or 1 800 827-4839 outside the Baltimore area. Information is at <http://www.dllr.state.md.us/employment/ui/index.html>

Massachusetts – initial claim by phone or in person only. File by phone at 1 877 626-6800 from Massachusetts, 617 626-6800 outside Massachusetts. Information is at <http://www.mass.gov/?pageID=dlwdconstituent&L=2&L0=Home&L1=Claimants&sid=Edwd>

Michigan – <http://www.michigan.gov/uia/0,1607,7-118--77962--,00.html>

Minnesota – <http://www.uimn.org/ui/webclaim.htm>

Mississippi – http://mdes.ms.gov/wps/PA_1_0_CH/docs/UnemploymentInsurance/UI-501.pdf - form must then be brought in person to a Mississippi Job Center

Missouri – <https://www.ui.dolir.mo.gov/som/>

Montana – <https://app.mt.gov/ui4u/index>

Nebraska – <https://uibenefits.nwd.ne.gov/BPSWeb/jsp/BPSClaimantWelcome.jsp>

Nevada – http://www.ui.nvdetr.org/UI_Agreement.html

New Hampshire – <https://claims.nhes.state.nh.us/weblogic/Welcome>

New Jersey – <https://wnjpin.state.nj.us/cont/index.html>

New Mexico – <http://www.dws.state.nm.us/>

New York – https://ui.labor.state.ny.us/UBC/home.do?FF_LOCALE=1

North Carolina – <https://www.ncesc.com/individual/webInitialClaims/applyBegin.asp>

North Dakota – <https://secure.apps.state.nd.us/jsnd/uiiaclaims/login.htm>

Ohio – <http://unemployment.ohio.gov/>

Oklahoma – <https://unemployment.state.ok.us/instructions.asp?x=n>

Oregon – <https://ssl6.emp.state.or.us/ocs4/ic/begin.cfm?u=20071204A073631B24227692.2816&lang=E>

Pennsylvania – <https://www.paclaims.state.pa.us/UCEN/>

Puerto Rico – file by phone only, by calling 1-888-238-8889

Rhode Island – <https://uiclaims.state.ri.us/RI-ICS/Intro/index.aspx?AC=yes>

South Carolina – <http://www.sces.org/ui/claimant/index.htm>

South Dakota –

<https://www.state.sd.us/Applications/LD70UIbp/Secure/LD70initialClaims/MainICI.asp>

Tennessee – <https://www.tennesseeanytime.org/labor/uib/index.html>

Texas – <http://www.twc.state.tx.us/ui/uiclaim.html>

Utah – <http://jobs.utah.gov/ui/WebInitialCubs/Welcome.aspx>

Vermont – file by phone only, by calling 1-877-214-3330. Information is at

<http://www.labor.vermont.gov/Unemployed/tabid/109/Default.aspx>

Virginia – <http://www.vec.virginia.gov/vecportal/seeker/jslogin.cfm>

Virgin Islands – file in person only. Contact information is listed at

<http://www.vidol.gov/OP/Contact.htm>

Washington – http://www.wa.gov/esd/ui/icapp/_starticapp.htm

West Virginia – <http://www.wvuc.org/>

Wisconsin – <https://ucclaim-wi.org/InternetInitialClaims/InfoBasicRequirements.asp>

Wyoming – <http://wyui.doe.state.wy.us/>

30. I heard that employees who are lower than a Grade 9 Step 5 would not be required to pay back UC benefits if they are later paid for the furlough period. Is this correct?

No. The decision on whether or not employees would have to pay back UC benefits would be decided by each state agency based on their UC law.

31. Can excepted employees file a UC claim, since they are not getting paid?

No. Excepted employees cannot file a UC claim, since they are not unemployed. In addition, in order to receive UC benefits, you must be able and available to accept work. Excepted employees would not meet this requirement since they are already working.

INJURY COMPENSATION

32. If an employee was in receipt of Federal Employee Compensation Act (FECA) wage-loss compensation and was then furloughed, what effect would the furlough have on his/her compensation?

None. FECA wage-loss compensation is not considered wages and, therefore, is not affected by a lack of funding at the employing agency.

33. If an employee sustains a traumatic injury at work and begins to receive Continuation Of Pay (COP) what happens to the COP when he is furloughed?

The Department of Labor's Office of Workers' Compensation Programs which administers the Federal Employees' Compensation Act (FECA) advises that, in the event of a Government shutdown, an employee who is disabled due to his or her injury is to be maintained in COP status during the shutdown unless the agency does not have monies available to pay the salary of that employee. If the agency does not have monies to pay salary during the shutdown but the

agency's budget is subsequently restored in such a way as to allow for retroactive payment of salary during the shutdown period, the employee should receive COP for any period of disability that occurs within the shutdown. In the event an agency is legally unable to pay COP to an employee because of a lapse in appropriations, the employee may file a claim for regular FECA wage loss compensation for that period.

EMPLOYEE RELATIONS

34. What information should be included in the notice of decision when no advance notice is issued?

The notice must specify the reason for the furlough and state that the usual 30 calendar days advance notice was not possible due to the emergency requiring curtailment of agency operations. The notice must include a statement of applicable appeal and grievance rights. If a copy of the Merit Systems Protection Board appeal form is not attached to the decision notice, the notice should include information on how to obtain a copy of the form.

35. What appeal rights do I have if I am furloughed?

Eligible employees may be able to appeal to the MSPB or through a negotiated grievance process if the employee is a member of a bargaining unit, but not both.



Kelly, Katherine <kate_kelly@ios.doi.gov>

Fwd: River Runners in Grand Canyon

1 message

Davis, Laura <laura_davis@ios.doi.gov> Tue, Oct 1, 2013 at 1:09 PM
To: Kate Kelly <kate_kelly@ios.doi.gov>, Blake Androff <blake_androff@ios.doi.gov>, Nikki Buffa <Nicole_Buffa@who.eop.gov>

So as you know we did not keep GC open in 95-96 but anyway FYI.

----- Forwarded message -----

From: **Ceiba Adventures**
Date: Tuesday, October 1, 2013
Subject: River Runners in Grand Canyon
To: laura_davis@ios.doi.gov

Greetings Ms. Davis,

I am writing from Ceiba Adventures. We are a private river trip outfitter serving primarily the Colorado River through Grand Canyon. I know things are busy today so I will keep this brief. As I am sure you have heard from other outfitters, this shutdown is going to hit us hard. October is our busiest month and a shutdown of more than a day or two could be devastating to us and our industry.

Aside from the financial blow concessionaires will take, there are the folks that will be denied their chance at running the Grand Canyon. This is an undertaking that takes months of planning, not to mention years of waiting for a permit. These are Americans from all over the country who are finally getting their opportunity to see one of our nation's crown jewels, they have paid their permit fees, they have gotten two and a half weeks off of work, and now they face being turned away by the Park Service.

During the 1995-1996 shutdown, Grand Canyon was kept open with the use of private and state funds. We feel know that if the Department of the Interior would get behind a plan like this, at the very least to allow river trips to continue to launch, we can find the money. Companies are set to lose hundreds of thousands of dollars, if there is a way to keep river trips launching, the companies will act in whatever way reasonably possible.

Furthermore, in terms of allowing river trips to launch, the cost would be minimal. Emergency response teams are still working, and the rangers at the launch, Lee's Ferry, are still on duty. Once a trip has launched from Lee's Ferry, they are largely on their own, requiring no other contact with Park service officials.

We have spoken with colleagues throughout the country and have confirmed that BLM and the Forest Service are still allowing river trips to launch within their jurisdiction. We in Grand Canyon, the pinnacle of American river running, wish to have the same courtesy extended to us.

I appreciate your attention and any feedback from your office on this issue. We will be working all day on this issue and look forward to hearing from you.

Thank You,
Lee Soifer
Ceiba Adventures, Inc
www.ceibaadventures.com
ceiba@ceibaadventures.com
800-217-1060

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Laura Daniel Davis
Chief of Staff
US Department of the Interior
202-208-7351
Laura_Davis@ios.doi.gov



Kelly, Katherine <kate_kelly@ios.doi.gov>

fyi

2 messages

Kelly, Katherine <kate_kelly@ios.doi.gov>

Fri, Oct 4, 2013 at 1:37 PM

To: laura davis <Laura_Davis@ios.doi.gov>, Nicole Buffa <nicole_buffa@ios.doi.gov>, "Androff, Blake J" <Blake_Androff@ios.doi.gov>

Grand Canyon chief: Only feds can reopen park

5 HOURS AGO • BY HOWARD FISCHER CAPITOL MEDIA SERVICES

PHOENIX — The superintendent of Grand Canyon National Park said Thursday it will not reopen during the government shutdown, even if others come up with the operating cash.

Dave Uberuaga said the decision was made by the Department of Interior that running a federal park is a “core operation that can only be funded by federal appropriations.” The willingness of some state officials and private groups to finance day-to-day operations during the stalemate in Washington, he said, is irrelevant.

“Until we have federal appropriations, the National Park Service is not opening any parks,” he said.

Uberuaga said this isn’t something aimed only at the Grand Canyon, where there already have been offers of financial assistance.

“It’s not the Statue of Liberty, it’s not Grand Canyon, it’s not the Washington Monument,” he told Capitol Media Services.

Uberuaga acknowledged that the last time government came to a standstill in 1995, then-Gov. Fife Symington negotiated a deal to provide \$17,000 a day in state and private funds to the Department of Interior to keep at least part of the park open. Donors got reimbursed following the 21-day closure.

He said, though, things were different then.

“It was, I think, what I would call a negotiated agreement because of the individual pressure on the park,” Uberuaga said.

That could be an understatement.

During an earlier closure that same year, Symington showed up in northern Arizona with National Guard troops, Department of Public Safety officers and staffers from the state Parks Department in tow.

“I marshaled the troops and basically said we’re going to open the canyon and I threatened them to open the canyon,” he recalled on Thursday. “There was sort of a drama there.”

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While Symington withdrew his forces, it did result in Rob Arnberger, who was park superintendent at the time, paving the way for higher-level talks between Symington and officials at the Department of Interior.

That ultimately led to a written agreement to open the park to Mather Point, Grand Canyon Village and the hotels and concessions. But visitors were not allowed to hike into the canyon or float down the Colorado River.

“At that time it wasn’t a bad decision,” Uberuaga said Thursday. “But it was something that we’re not going to have go on this time.”

The position makes moot the \$25,000 pledge by Red Feather Properties, which runs a lodge in nearby Tusayan, along with claims by some state legislators the state should pony up the funds.

Current Gov. Jan Brewer earlier this week had shown no interest in the issue, saying the state had higher priorities. Since that time, Brewer said her office had made two proposals to the federal government but both had been “shot down.”

Uberuaga said the park normally gets between 16,000 and 18,000 day visitors at this time of year, going up as high as 20,000 on weekends. “We’re getting into the peak of the hiking season,” he said.

He said occupancy at the park’s approximately 1,000 hotel rooms tends to be full year round.

The last shutdown actually led several members of Congress to propose a measure authorizing the Secretary of the Interior to accept donations of qualified state employee services during any period of federal government shutdown. It got 254 votes, more than a majority — but not the two-thirds necessary to push through any measure without going through the normal procedures.

--

Kate Kelly
Director of Communications
Department of the Interior
(202) 208 2409 (o) / (202) 306 3888 (c)
kate_kelly@ios.doi.gov

Davis, Laura <laura_davis@ios.doi.gov>

Fri, Oct 4, 2013 at 1:41 PM

To: Peggy O'Dell <peggy_o'dell@nps.gov>, "Jarvis, Jon" <Jon_Jarvis@nps.gov>, Maureen Foster <Maureen_Foster@nps.gov>

Cc: Kate Kelly <kate_kelly@ios.doi.gov>

Wanted you to see this ASAP. Concerned about Dave on the record - as well as his appearing to agree that we opened GC in '95. Please let us know when you can chat.

[Quoted text hidden]



Kelly, Katherine <kate_kelly@ios.doi.gov>

1995 Clips

1 message

Nicole Buffa <nicole_buffa@ios.doi.gov> Mon, Oct 7, 2013 at 2:01 PM
 To: Jonathan Jarvis <jon_jarvis@nps.gov>, Margaret O'Dell <peggy_o'dell@nps.gov>, Laura Davis <Laura_Davis@ios.doi.gov>, Blake Androff <blake_androff@ios.doi.gov>, Kate P Kelly <Kate_Kelly@ios.doi.gov>

I thought these might be helpful context.

(2nd shutdown, began one minute after midnight on Saturday, December 16th)

Saturday 12/16/95

- President says he will cover cost to light national Christmas tree. <http://news.google.com/newspapers?id=ZSxEAAAIBA&sjid=PbEMAAAIBA&pg=2819,3239187&dq=parks+shutdown&hl=en>

Sunday 12/17/95

- "The National Park Service closed some sites in **Washington state** on Saturday morning, part of the federal government shutdown. At **Olympic National Park**, all visitor centers, ranger stations and administrative offices were **closed** along with Hurricane Ridge Road. Some campgrounds and the Kalaloch Lodge remained open, the Park Service said. The Klondike Gold Rush National Historical Park in Seattle's Pioneer Square was shut down. "Just like last time, we're closed," park ranger Todd Haskell told KIRO-TV. The partial shutdown came about because President Clinton and Republicans in Congress have reached another impasse in federal budget talks. While some essential services and employees remain on the job, many have been told to stay home. "At this time I think the only nonessential personnel right now are probably the politicians," Haskell said. "National Park units which are easily closed by shutting a door or a gate are closed as of 9:30 a.m.," the Park Service said. No one answered the telephone at any of the nine National Park sites in the state on Saturday, but only at Olympic National Park did a recorded message mention the shutdown."

- "Annoyed tourists were **turned away from the White House** and **locked out of the Washington Monument's parking lot** Saturday after parts of the government shut down for the second time in five weeks. President Clinton was on the minds of some visitors as they rushed around **Smithsonian Institution** exhibits shortly before **museums closed prematurely** about noon. Tourists were **free to wander the halls of the Capitol, touch the walls of the Vietnam Memorial and climb the steps of the Lincoln Memorial to read the Gettysburg Address** – those and other similar sites don't require supervision by federal employees. But the **White House was closed . . . Some large parks remained accessibly, but without the usual visitor's services. The Grand Canyon National Park in Arizona remained open**, thanks to \$211,500 authorized by the state parks board. In Baltimore, the

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historic fort that inspired Francis Scot Key... **closed** early Saturday afternoon. . . **The Fort McHenry National Monument opened** two hours late Saturday morning while park rangers awaited word on whether they would be able to operate for the weekend . . . That word came shortly before 2 pm. All but two of the park's six workers were sent home." <http://news.google.com/newspapers?id=BUlIAAAIIBAJ&sjid=M64FAAAIIBAJ&pg=2588,3500944&dq=lincoln-memorial&hl=en>

- "We arrived when they **shut it down,**' she said at the **Lincoln Memorial.**" <http://news.google.com/newspapers?id=ZixEAAAIBAJ&sjid=PbEMAAAIBAJ&pg=907,3417221&dq=memorial+shutdown&hl=en>

- State and private aid will keep the grand canyon open. <http://news.google.com/newspapers?id=lhsOAAAIBAJ&sjid=kn0DAAAIBAJ&pg=6467,2357179&dq=parks+shutdown&hl=en>

- Crater Lake Center shut down. **Crater Lake National Park closed** its visitor information center Saturday as Oregon felt the impact of a second federal shutdown... **National parks with doors or gates or access points were closed** Saturday morning, the Interior Department's Holly Bunduck said. Other facilities had reduced services. **Campgrounds and concession businesses, however, remained open.** <http://news.google.com/newspapers?id=vEVWAAAIBAJ&sjid=c-sDAAAIBAJ&pg=6704,4419940&dq=parks+shutdown&hl=en>

- Shutdown won't ground Wright flight celebration. "The anniversary of the first powered flight will go as scheduled at the **Wright Brothers National Memorial** despite the federal government shutdown, a park official said Saturday. . . . The budget impasse on Capitol Hill **will not close** the **outer banks monument** or halt today's celebration. Washington's **Smithsonian Institution** and **Lincoln Memorial** had locked their doors by midday Saturday. In **North Carolina, the Blue Ridge Parkway** and **Great Smoky Mountains** remained quiet as employees were sent home. A contingency plan had today's celebration – expected to include more than 1,000 people – scheduled for a nearby middle school... **The majority of National Service Park [sic] employees are working the last few hours of their regular shifts today before beginning their furloughs,** said Russel Berry, park superintendent. Any other costs associated with the anniversary will be picked up by several organizations. All **433 miles of the Blue Ridge Parkway remained open** to traffic Saturday, but the attraction was in a partial-shutdown phase. The **park's Asheville headquarters** sent two of their four employees home for the weekend." <http://news.google.com/newspapers?id=b6osAAAIBAJ&sjid=EhUEAAAIBAJ&pg=6552,556601&dq=wright+shutdown&hl=en>

Monday, 12/18/95

- "There was a steady parade of disappointed tourists at Battery Park yesterday afternoon as the latest **Federal Government shutdown closed access to the Statue of Liberty and Ellis Island** here and to hundreds of national parks around the country. Despite the partial shutdown, hundreds of camera-carrying visitors trooped along Battery Place to the Ellis Island ferry. . . . The spending authority lapsed after the White House and Congress failed to agree on an overall budget. Because the shutdown began on a weekend, tourists were the first affected. <http://www.nytimes.com/1995/12/18/us/brunt-of-federal-shutdown-falls-on-the-tourists-again.html>

Sunday, 12/24/1995

- Shutdown Cancels **Yosemite Yule Fest**. “The government shutdown **cancel**ed dinner plans Friday for 1,650 people who had paid \$185 each to dress in medieval attire and dine on prawns and peacock pies. Five Christmas feasts at the **Ahwahnee Hotel in Yosemite National Park** were scrapped because of stalled budget talks in Washington that have closed more than 360 national parks and monuments. . . . The **National Museum of American History** will **reopen** Tuesday despite the partial shutdown, after officials shifted private trust fund money to pay some workers. An agreement sealed Friday with the Interior Department will allow **part of Carlsbad Caverns National Park** in New Mexico to **reopen** during the federal Shutdown....” <http://news.google.com/newspapers?id=n55dAAAAIBAJ&sjid=4lwNAAAAIBAJ&pg=5314,4730275&dq=parks+shutdown&hl=en>

Friday, 12/29/95

- “Thomas holds the **federal contract to operate the horse-drawn sleigh ride at the National Elk Refuge** near Jackson Hole, Wyo. Instead of hauling 1,000 visitors a day across the snow to see the wintering herds, he is home calling lenders to tell them he cannot pay his debts. The government’s decision to close national refuges and parks has cost him about \$ 60,000, forced him to lay off 12 employees and park his seven sleighs. “If they don’t get the refuge open by the first of the year, I don’t know what I can do,” Thomas said yesterday. The shutdown, shrugged off at the start by many Americans as Washington political theater, now seems more serious. It is reaching far beyond the 760,000 federal workers who likely will get half-full paychecks next week. And beyond the tourists who have been grumbling about locked museum doors on the Mall. ... In Mariposa County, Calif., near Yosemite National Park, the county board of supervisors has asked the governor to declare the county an economic disaster area. With the park closed and tourists departing, the county is losing from \$8,000 to \$ 10,000 a day in tax revenue, the Interior Department said.” http://articles.washingtonpost.com/2011-03-03/politics/35207194_1_federal-employees-federal-contract-nih

Nikki Buffa

Deputy Chief of Staff

U.S. Department of the Interior

202-219-3861

nicole_buffa@ios.doi.gov



Jacobsen, Arthur <art_jacobsen@nps.gov>

Claude Moore Farm

1 message

Jerry Marshall <jerry_marshall@nps.gov>

Tue, Oct 8, 2013 at 9:20 PM

To: Arthur Jacobsen <art_jacobsen@nps.gov>, Keith Horton <keith_horton@nps.gov>, Steven Booker <steve_booker@nps.gov>, Richard Yurko <richard_yurko@nps.gov>, Allan Griffith <allan_griffith@nps.gov>, Wade Clausson <wade_clausson@nps.gov>

Alex Romero Informed me per the Director, Claude Moore Farm is to be open beginning tomorrow and continue operations while the government is shut down.

Sent from my iPhone



Jacobsen, Arthur <art_jacobsen@nps.gov>

Fwd: Claude Moore Farm

1 message

Jacobsen, Arthur <art_jacobsen@nps.gov>

Wed, Oct 9, 2013 at 8:25 AM

To: Philip Beck <Philip_Beck@nps.gov>, Christopher Paschel <christopher_paschel@nps.gov>

Fyi

Captain Art Jacobsen
West District Commander
Patrol Branch/Ops Division
United States Park Police
703-285-2148

----- Forwarded message -----

From: "Jerry Marshall" <jerry_marshall@nps.gov>

Date: Oct 8, 2013 9:20 PM

Subject: Claude Moore Farm

To: "Arthur Jacobsen" <art_jacobsen@nps.gov>, "Keith Horton" <keith_horton@nps.gov>, "Steven Booker" <steve_booker@nps.gov>, "Richard Yurko" <richard_yurko@nps.gov>, "Allan Griffith" <allan_griffith@nps.gov>, "Wade Clausson" <wade_clausson@nps.gov>

Cc:

Alex Romero informed me per the Director, Claude Moore Farm is to be open beginning tomorrow and continue operations while the government is shut down.

Sent from my iPhone

000468



Claude Moore Park Update

1 message

Jacobsen, Arthur <art_jacobsen@nps.gov>

Tue, Oct 8, 2013 at 11:11 AM

To: Robert Maclean <robert_maclean@nps.gov>, Keith Horton <keith_horton@nps.gov>, Victor Chapman <victor_chapman@nps.gov>, Philip Beck <Philip_Beck@nps.gov>, Patrick Smith <Patrick_Smith@nps.gov>
Cc: Terry Felt <Terry_Felt@nps.gov>, Jerry Marshall <Jerry_Marshall@nps.gov>

Lt Marshall met with Anna Eberly at CMP and re-advised her of the closure mandates and regulations. She stated she understood and indicated she has been complying. Ms. Eberly stated she has no knowledge of any pending demonstration, appearance by a member of Congress or the media.

Lt. Marshall located a back gate unlocked and open. He remedied the issued and notified NPS.

All D2 units have cleared and will make hourly checks.

Captain Art Jacobsen
United States Park Police
West District Commander,
Patrol Branch
Office:703-285-2148



Marshall, Jerry <jerry_marshall@nps.gov>

Fwd: Court Order re: Langley Forks Park

2 messages

Horton, Keith <keith_horton@nps.gov>

Wed, Oct 9, 2013 at 7:33 PM

To: Art Jacobsen <Art_Jacobsen@nps.gov>, Jerry Marshall <jerry_marshall@nps.gov>

Major Keith Horton

----- Forwarded message -----

From: "Lisa Mendelson" <lisa_mendelson-ielmini@nps.gov>

Date: Oct 9, 2013 7:01 PM

Subject: Fwd: Court Order re: Langley Forks Park

To: "Keith Horton" <keith_horton@nps.gov>

Cc:

Couldn't get your name to come up! Here you go. Thx.

Lisa Mendelson, AICP
National Park Service
Deputy Regional Director
202-297-1338 cell
202-619-7023 office

Begin forwarded message:

From: "Mendelson, Lisa" <lisa_mendelson-ielmini@nps.gov>**To:** Lisa Mendelson <lisa_mendelson-ielmini@nps.gov>, Robert MacLean <Robert_MacLean@nps.gov>, Arthur Jacobsen <art_jacobsen@nps.gov>, Alex Romero <Alex_Romero@nps.gov>, Jon James <jon_james@nps.gov>**Subject: Fwd: Court Order re: Langley Forks Park**

Langley Forks Park is to reopen, please see below. Please share with the officers, thanks.

~Lisa

*

*

Lisa Mendelson-Ielmini, AICP
Deputy Regional Director
National Park Service
202-619-7023 office
202-297-1338 cell

----- Forwarded message -----

From: Mendelson, Lisa <lisa_mendelson-ielmini@nps.gov>

Date: Wed, Oct 9, 2013 at 6:39 PM

Subject: Re: Court Order re: Langley Forks Park

To: cindy.messinger@fairfaxcounty.gov, david.bowden@fairfaxcounty.gov,

000470

juline.cline@fairfaxcounty.gov

Cc: Kim Fondren <kim.fondren@sol.doi.gov>, Edward Boling <ted.boling@sol.doi.gov>, Peggy O'Dell <Peggy_O'Dell@nps.gov>, Alex Romero <Alex_Romero@nps.gov>

My apologies, the attachment didn't go through. Attached please find the Order.

* _____ *

Lisa Mendelson-Ielmini, AICP
Deputy Regional Director
National Park Service
202-619-7023 office
202-297-1338 cell

On Wed, Oct 9, 2013 at 6:37 PM, Mendelson, Lisa <lisa_mendelson-ielmini@nps.gov> wrote:

Ms. Cindy Messinger
Acting Director
Fairfax County Park Authority

Ms. Messinger:

Pursuant to the attached Court Order dated today, October 9, 2013, it is the expectation of the National Park Service that you will comply with the Order and open Langley Forks Park to the public immediately and return the park to its normal hours of operation.

The Court Order requires us to order the Fairfax County Park Authority to honor its' permit entered into with the McLean Youth Athletics and MacLean Youth Lacrosse as well as any other permits for this area.

We hope to take steps to moot this litigation in the next few days.

Sincerely,

~Lisa A. Mendelson-Ielmini

* _____ *

Lisa Mendelson-Ielmini, AICP

Deputy Regional Director

National Park Service

202-619-7023 office

202-297-1338 cell

 **2013 10 09 Langley Forks Order.pdf**
262K

Marshall, Jerry <jerry_marshall@nps.gov> Thu, Oct 10, 2013 at 8:52 AM
To: Franz Ferstl <franz_ferstl@nps.gov>, Jeffery Bloch <jeffrey_bloch@nps.gov>, Richard Yurko <richard_yurko@nps.gov>, "Scott Grimard (USAVAE)" <Scott.Grimard@usdoj.gov>, Thomas Locascio <thomas_locascio@nps.gov>, Gregory Harper <greg_harper@nps.gov>, Allan Stone <Allan_Stone@nps.gov>, "Alsaigh, Cotayba" <Cotayba_Al-Saigh@nps.gov>, Anthony McSherry <anthony_mcsherry@nps.gov>, Billy Brancato <William_Brancato@nps.gov>, Brian Humbertson <brian_humbertson@nps.gov>, Bruce Martin <bruce_martin@nps.gov>, Calvin Nguyen <calvin_nguyen@nps.gov>, Christina Evans <Christina_Evans@nps.gov>, Corey Mace <Corey_Mace@nps.gov>, Don Greene <Donald_Greene@nps.gov>, Enrique Wong <enrique_wong@nps.gov>, Frank Hilsher <frank_hilsher@nps.gov>, Jared Tyng <jared_tyng@nps.gov>, Jason Keyser <jason_keyser@nps.gov>, Kenneth Leonas <kenneth_leonas@nps.gov>, Lawrence Decker <lawrence_decker@nps.gov>, Lloyd Johnson <lloyd_johnson@nps.gov>, Lucas Vinyard <Lucas_Vinyard@nps.gov>, Marfak Campbell <marfak_campbell@nps.gov>, Micheal Brumbaugh <michael_brumbaugh@nps.gov>, Nicholas Hafner <nicholas_hafner@nps.gov>, Robert Marcoux <robert_marcoux@nps.gov>, Steven Wood <Steven_Wood@nps.gov>, Allan Griffith <allan_griffith@nps.gov>

----- Forwarded message -----

From: **Horton, Keith** <keith_horton@nps.gov>
Date: Wed, Oct 9, 2013 at 7:33 PM
Subject: Fwd: Court Order re: Langley Forks Park
[Quoted text hidden]

--
Lieutenant Jerry Marshall
United States Park Police
District Two Station Commander

Office 703-285-1000
Fax 703-285-1010

11/1/13

DEPARTMENT OF THE INTERIOR Mail - Fwd: Court Order re: Langley Forks Park



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THE SECRETARY OF THE INTERIOR
WASHINGTON

OCT 09 2013

The Honorable Sean Parnell
Governor of Alaska
Juneau, Alaska 99811

Dear Governor Parnell:

Thank you for your phone call and follow-up letter on October 4, 2013. I fully appreciate your concern regarding access to National Wildlife Refuges, National Parks and Preserves, and public lands during this difficult period of government shutdown. We continue to hope for a speedy resolution to the lapse in Federal appropriations so that we may reopen all of these lands for the use and enjoyment of Alaskans and visitors to your State.

As we discussed during our conversation, due to the lapse in funds appropriated by the United States Congress for the operation of the National Park System and the National Wildlife Refuge System, a nationwide closure has been implemented to maintain public health and safety and to protect park and refuge resources during the shutdown period. Consistent with the legal limitations on spending in the absence of appropriations and the Department of the Interior's Contingency Plans, available at www.doi.gov/shutdown, only a relatively small number of personnel are on duty during the shutdown period. Those personnel are not sufficient to provide a full range of public and resource protection services. Therefore, in light of the shutdown and Contingency Plan, measures less restrictive than a national closure are not sufficient to maintain public health and safety and to protect park and refuge resources.

While nationwide closures have had to be implemented, the park and refuge closures in Alaska fully respect the unique provisions set forth in the Alaska National Interest Lands Conservation Act (ANILCA). Consistent with our regulations implementing ANILCA, the park and refuge closures in Alaska will expire automatically at the end of the shutdown period or no later than October 31, 2013. Also specific to Alaska, the closures in both parks and refuges allow for the continuation of subsistence uses and access to in-holdings authorized by ANILCA. In addition, members of the public, concessioners, and holders of commercial use authorizations who were already on multi-day backcountry trips that could not be safely terminated immediately when the closure occurred have been allowed to continue and complete their multi-day backcountry trips in accordance with their approved permit or plan.

Moreover, the park and refuge closures do not apply to private and public owners of property or other valid existing rights located within the exterior boundaries of units of the National Wildlife Refuge System or National Park System. Park and refuge managers will continue to allow such owners reasonable access to their private property. Also, this closure does not apply to State

roads and highways or roads that pass through units of the National Park System or National Wildlife Refuge System, which provide primary access between points located outside of the refuges or parks. Members of the public may continue to use those roads during the shutdown period. However, park and refuge managers are limited in their ability to maintain or repair those roads and managers may close those roads or portions of those roads if such closure is warranted by weather, poor road conditions, or other circumstances. In short, the park and refuge closures are consistent with each other, are authorized under the ANILCA regulations addressing emergency closures, and fully respect the rights granted under ANILCA.

As we also discussed, the Bureau of Land Management (BLM) operates under significantly different statutes and management structure than do the Fish and U.S. Wildlife Service and the National Park Service. On public lands managed by the BLM, the BLM has closed and secured visitor centers and facilities. Visitor activities that require a permit may be canceled or postponed. Contracted operations such as trash collection and facilities cleaning have been suspended. Where practical, areas will be posted with signs that state that no patrols, maintenance or other management activities will be provided (including emergency or rescue services provided by BLM). Concessions and some commercial outfitter and guide special recreation permits can continue operations as long as they do not need BLM field monitoring and regulatory oversight and are not operating in sites that have been closed.

I hope this letter has helped to clarify the closure decisions necessitated by the lapse in appropriations on lands administered by the Department of the Interior. As an avid outdoor enthusiast and former business leader dependent on access to public lands for customers, I fully appreciate that the Federal Government shutdown has an economic impact on communities, businesses, and individuals. My colleagues throughout the Department of the Interior are anxious to get back to work—serving the public, fulfilling the need for scientific support, and supporting Alaska Natives and American Indians. I join you in wanting this unfortunate situation to end!

Sincerely,



Sally Jewell



STATE OF SOUTH DAKOTA
DENNIS DAUGAARD, GOVERNOR

September 30, 2013

Jonathan Jarvis
National Park Service Director
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

VIA EMAIL: jon_jarvis@nps.gov
VIA FAX: 202.219.0910

Dear Director Jarvis,

I'm writing about the possibility of a federal government shutdown, and the effect that would have on the Mount Rushmore National Memorial.

If the federal government is unable to keep Mount Rushmore open, the State of South Dakota will provide state personnel and resources to keep the Memorial open. I am confident state government could work with the federal government and private vendors to securely and competently manage Mount Rushmore during a federal shutdown. I hope we are able to work with you and your staff to this end. I have attached to this letter some suggested means to operate Mount Rushmore during a federal government shutdown.

I hope a federal shutdown can be averted. Mount Rushmore is a national treasure and is a special location for South Dakotans and citizens across the country.

Sincerely,

A handwritten signature in cursive script that reads "Dennis Daugaard".

Dennis Daugaard

DD:nn

Enclosure

Keeping Mount Rushmore Open to the Public **State of South Dakota Logistical Addendum**

Security – If existing federal personnel are unable to continue to provide security, state personnel will provide security.

Parking – It is my understanding that the contract for the operation of the parking system is held by a non-government entity called Mount Rushmore National Memorial Society, the employees of which are not federal personnel. As such, the Mount Rushmore National Memorial Society could continue to operate the parking facility.

Visitor Center – The visitor center would not be open for operations.

Concessions and Gift Shop – The concessions and gift shop at the Memorial are operated by Xanterra Parks and Resorts. The employees for Xanterra are not federal personnel, and could continue to run those operations. A shutdown to prohibit Xanterra from operating would unfairly penalize this contractor and its employees by forcing the closure of their business.

Lighting – I am prepared, as was done in the government shutdown of 1995, to raise private funds to pay for lighting on the Memorial for the duration of a federal shutdown.

Highway 244 – We will keep Highway 244 open, and state and local law enforcement officials will coordinate to provide appropriate law enforcement in that area.



STATE OF SOUTH DAKOTA
DENNIS DAUGAARD, GOVERNOR

Fax Number – 605.773.4711

TODAY'S DATE: 9/30/2013

PAGES (including cover sheet): 3

TO: Jonathan Jarvis, National Park Service Director

RE: Mount Rushmore National Memorial

FAX NUMBER: 202.219.0910

FROM: Governor Dennis Daugaard/Nila Novotny

Special Instructions: _____

Original being mailed: No



Office of the Director

United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.
Washington, D.C. 20240

National Park System Closure Determination and Notice

Pursuant to 36 C.F.R. § 1.5, effective at 12:01 a.m. on October 1, 2013, all units of the National Park System nationwide are closed to public visitation and use, subject to the conditions and exceptions described below. This national closure determination and notice is necessitated by a lapse in funds appropriated by the United States Congress for the operation of the National Park System and will remain in effect until funding is restored. The period of time during which appropriated funds are not available may be referred to in this determination and notice as the “shutdown period.”

Under 36 C.F.R. § 1.5(a) this national closure determination and notice is necessary to maintain public health and safety in units of the National Park System and to protect park resources and values during the shutdown period. Consistent with the Department of the Interior Contingency Plan, available at www.doi.gov/shutdown, only a relatively small number of “excepted personnel” will be on duty during the shutdown period. Those personnel are not sufficient to provide a full range of visitor services. Therefore, in light of the shutdown and Contingency Plan, measures less restrictive than a national closure will not suffice to maintain public health and safety and to protect park resources and values. The lapse in appropriated funds qualifies as an “emergency” under 36 C.F.R. § 1.5(b); therefore, this determination and notice does not require special rulemaking.

Condition and Exceptions:

1. National Park Service personnel who have been identified as excepted will continue to report for duty in accordance with the National Park Service Contingency Plan and as directed by their supervisors.
2. Members of the public who are currently visiting a unit of the National Park System and not staying overnight in the park must vacate the park immediately. All day-use concession-operated visitor services and facilities are to be closed immediately. Exceptions may be granted by superintendents only if a facility is deemed essential for health or safety purposes.
3. Subject to paragraph 6 below, members of the public who are currently visiting a unit of the national park system and staying overnight either in a National Park Service-operated campground or a concessioner-operated facility in the park must vacate the park by 6:00 p.m. EDT on October 3, 2013.
4. Subject to paragraph 6 below, National Park Service concessioners must suspend their operations in overnight accommodations by 6:00 p.m. EDT on October 3, 2013.
5. Subject to paragraph 6 below, holders of National Park Service commercial use authorizations must immediately cease their in-park operations.

6. The deadlines announced above do not apply to members of the public, concessioners, and holders of commercial use authorizations who are on multi-day backcountry trips that cannot be safely terminated before the end of the trip. Those individuals may continue and complete their multi-day backcountry trips in accordance with their approved permit or plan. Those individuals then must vacate the park within 12 hours after the completion of their trip.

7. This closure determination and notice does not apply to private owners of interests in real property located within the exterior boundaries of units of the National Park System. Park superintendents will continue to allow such owners reasonable access to their private property.

8. This closure determination and notice does not apply to roads that pass through units of the National Park System and provide primary access between points located outside of the parks. Members of the public may continue to use those roads during the shutdown period. However, superintendents may not expend any appropriated funds to maintain or repair those roads. Moreover, superintendents may close those roads, or portions of those roads, in accordance with 36 C.F.R. § 1.5, if such closure is warranted by weather, poor road conditions, or other circumstances.

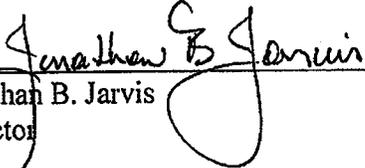
9. All previously issued permits for special events scheduled to occur in units of the National Park System during the shutdown period are hereby cancelled. At the end of the shutdown period holders of cancelled permits may apply for a new permit. Except as provided in paragraph 10 below, all closed areas of the National Park System are also closed to First Amendment activities during the shutdown period, and any previously issued permits for First Amendment activities are hereby cancelled.

10. This closure determination and notice does not apply to First Amendment activities in the National Mall and Memorial Parks and areas administered by the NPS Liaison to the White House in Washington, D.C., and Independence National Historical Park in Philadelphia, Pennsylvania. Persons may continue to conduct First Amendment activities in these units in accordance with existing regulations.

11. Each park superintendent must take reasonable measures to comply with 36 C.F.R. § 1.7 and to provide adequate public notice of this national closure determination and notice.

12. This national closure determination and notice will expire automatically at the end of the shutdown period.

13. Violation of this national closure determination and notice is prohibited.



Jonathan B. Jarvis
Director

October 1, 2013
Date

Amendment to National Park System Closure Determination and Notice

Pursuant to 36 C.F.R. § 1.5, effective at 12:01 a.m. on October 1, 2013, all units of the National Park System nationwide were closed to public visitation and use, subject to the conditions and exceptions described in the Director's October 1, 2013 Closure Determination and Notice (Closure Notice). That national closure was necessitated by a lapse in funds appropriated by the United States Congress for the operation of the National Park System. Under the provisions of the Antideficiency Act (Act), in the absence of an appropriation the National Park Service (NPS) is able to undertake only very limited activities, primarily related to emergencies. Given time constraints, NPS could not review each of the thousands of established contracts, permits and agreements prior to the lapse, and took the most prudent course of action to minimize the possibility of obligating funds in the absence of appropriations.

Consistent with its regulations and the terms of the applicable agreements, the Closure Notice suspended special use permits, concessions, commercial use authorizations and other partner agreements to ensure that a violation of the Act would not occur. The shutdown of the Government and the National Parks has created significant hardships for many persons and organizations, including the partner organizations which operate facilities under concession contracts and other agreements. Because a limited number of those partner organizations may be able to resume operation of such facilities within the scope of their existing written authorizations, at least in the short term, without requiring an obligation or expenditure of funds by NPS, the Closure Notice is hereby amended as follows:

14. The Director of the National Park Service will make a determination, on a case-by-case basis, whether a commercial, concession, and/or partnership facility may be re-opened during the government shutdown. The October 1 National Closure determination is not final agency action as to such partner organization until the Director has made a determination in accordance with the process and criteria described below:

- A. A written request for reconsideration must be submitted by the facility operator or its legal representative to Business_Services@nps.gov.
- B. The facility or area is accessible from private land or a road that is currently open. This may be a state or park through road that remains open to the public in accordance with the NPS Closure Notice, e.g. a "through road."
- C. The facility and/or area is self-contained and visitors do not require access to or the use of closed National Park lands or facilities
- D. Re-opening of the facility will not require NPS to obligate or expend any funds in violation of the Antideficiency Act.
- E. The operator of the facility confirms in writing that its existing agreement requires it to indemnify NPS and the United States for any liabilities that may be incurred as a result of its operations during the government shutdown.

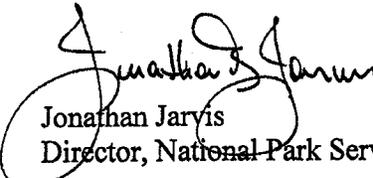
These decisions will be made solely by the Director, will not be delegated, and will constitute final agency actions.

Any decision by the Director to reopen such a facility during the shutdown is contingent on his finding that the facility could operate without NPS incurring any expenditure or obligation in violation of the Antideficiency Act during this shutdown period, currently

framed for this purpose from the present until October 30. In reviewing the request, the NPS may ask the requester to provide copies of relevant agreements and an explanation why in the opinion of the requester the reopening the facility would not cause NPS to be expending or obligating funds in violation of the Antideficiency Act.

If an individual facility, or various facilities on a cumulative basis, would likely cause such expenditures or obligations to be made, NPS would have to require partner organizations to again suspend operations. Therefore this interim policy is intended to be used sparingly and each decision will be made in consideration of its NPS-wide implications.

Notification: Notification of the decision to allow or deny a facility to re-open will be conveyed in writing (including by email), and documentation supporting each decision will be assembled for an administrative record. Specific provisions may be attached to each decision to re-open, but at a minimum, each operator must agree to inform the visitors using their facility that the National Park remains closed to public use with the exception of the immediate environs subject to the control of the partner under its existing agreement with NPS.


Jonathan Jarvis
Director, National Park Service

Date 10/11/2013