

## FEDERAL MARITIME COMMISSION

### PLAN FOR SHUTDOWN DUE TO LAPSE IN APPROPRIATIONS (Pursuant to section 124.2 of OMB Circular A-11)

This is the Federal Maritime Commission's (Commission or FMC) plan to shut down should there be a lapse in current fiscal year appropriations.

#### Summary

<b>Lapse Plan Summary Overview</b>	
Estimated time (to nearest half day) required to complete shutdown activities:	<i>One-half (1/2) day</i>
Total number of agency employees expected to be on board before implementation of the plan:	<i>114</i>
<b>Total number of employees to be retained under the plan for each of the following categories:</b>	
Compensation is financed by a resource other than annual appropriations:	<i>0</i>
Necessary to perform activities expressly authorized by law:	<i>0</i>
Necessary to perform activities necessarily implied by law:	<i>7</i>
Necessary to the discharge of the President's constitutional duties and powers:	<i>0</i>
Necessary to protect life and property:	<i>1</i>
<b>Brief summary of significant agency activities that will continue during a lapse:</b>	
Only activities that are necessary to protect life and property, are necessarily implied by law, and/or are necessary to the discharge of the President's constitutional duties and powers - limited to the safe and secure maintenance of agency physical offices and continued communication and responsiveness to OMB and/or OPM will be performed.	
<b>Brief summary of significant agency activities that will cease during a lapse:</b>	
All work that furthers the agency's mission to ensure a competitive and reliable international ocean transportation supply system that supports the U.S. economy and protects the public from unfair and deceptive practices.	

In the absence of appropriations, federal agencies may not incur any obligations that cannot lawfully be funded from prior appropriations unless such obligations are otherwise authorized by law. Federal agencies may incur obligations as necessary to protect life or property, for the orderly termination of the agency's functions, and for those functions for which there is express authorization

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by law to continue during a lapse in funding. However, without a continuing source of funding, funds may not be disbursed.

All Commission employees shall be furloughed except when performing any of the above enumerated functions and activities. Because Commissioners are Presidentially appointed, Senate-confirmed (PAS) Officers of the United States who are paid an annual salary that is not dependent on the hours or days they work, they are exempt from furlough because of a shutdown. Accordingly, the Commission's Chairman and its Commissioners may continue to work but will not be paid until funds have been appropriated. Similarly, the employees required to perform excepted activities (including employees providing legal advice and making decisions on whether certain activities fall within excepted activities) will report for duty as necessary to accomplish the excepted activities and will not be paid until funds have been appropriated.

Once appropriations have been restored, all employees will be notified to return to work. Employees will be directed to view the Office of Personnel Management (OPM) and news websites to learn when funds have been appropriated, and to return to work on their next regular duty day. If employees have problems returning to work on the day specified, flexibilities available to supervisors include allowing telework, adjustments to regular work schedule, or the use of annual leave, compensatory time off, or credit hours.

### Estimated Time to Complete Shutdown

Most of the activities associated with the orderly shutdown of the agency's operations, including securing the agency's IT infrastructure, its records, and notifying employees of the furlough should take no longer than a half-day.

### Procedures

The plan contemplates that all employees will report to work on the first workday of a funding lapse and will be issued furlough notices via email. While on maximum telework, most employees will report to work via existing telework arrangements. Several employees will be physically present at the worksite solely to engage in shutdown or excepted activities.

All Commission activities will be completely shut down by 12:00 Noon EDT. As with all plans that try to anticipate a set of circumstances that may or may not occur, it may be necessary to modify the plan depending upon the circumstances.

The plan assumes that certain preparatory work will be done in advance, including the following:

- preparing a press release to be circulated and posted on the FMC website notifying the public that the Commission will be closed;
- preparing a notice for the Commission's electronic filing systems notifying the public that the FMC will not accept such filings during a shutdown;
- drafting orders suspending all proceedings;
- processing as much pending priority work as possible;
- arranging for receipt of mail and checks;
- determining which employees will be on leave or on travel and rearranging travel plans, as necessary;

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- preparing email furlough notices with attachments;
- taking steps to prepare for the suspension of contractual services (through stop-work notices), except those that are deemed essential or those that may continue to be funded with previous fiscal year appropriations; and
- advising employees of the possibility of a furlough.

When notified by OMB that a lapse in funding has occurred, the agency head (FMC Chairman or designee) shall immediately notify OMB when shutdown activities have been initiated.

All employees will be expected to report to work on the first workday of the funding lapse but will only engage in actions necessary to shut down the Commission. These may include, among other things:

- cancelling meetings, hearings, and other scheduled Commission business;
- answering telephones and email inquiries and advising callers of the pending shutdown;
- issuing a press release advising the general public of the shutdown and posting it to the website;
- serving stay orders to parties to Commission proceedings;
- petitioning courts for suspension or stay of any ongoing litigation;
- securing files, confidential materials, office work papers, and documents;
- issuing stop-work orders to affected contractors;
- documenting the status of projects so that work can be resumed with the least disruption possible; and
- recalling employees from travel and advising those on leave that they will be furloughed, etc.

The Managing Director will issue furlough notices via email. Furlough notices will indicate if the employee is excepted for any limited functions. Employees will be deemed to have received notice upon issuance of the Managing Director's email. If for some reason prior written notice is not feasible, any reasonable notice is permissible.

Once employees have completed their assigned shutdown tasks and received a furlough notice, they will be asked to cease telework or leave the worksite. Employees will also be advised to listen to the news media as well as communication from their immediate supervisor through a telephone/personal email tree for word of a recall.

As office shutdown functions are completed and employees furloughed, the immediate supervisor will notify the bureau or office director that all shutdown activities have been completed and all employees have been furloughed. As bureau and office shutdown activities are completed, each bureau or office director will report to the Managing Director that all shutdown activities have been completed for their program areas. Each bureau or office director whose function has been shut down will be furloughed by the Managing Director. The Managing Director will advise the Chairman once shutdown activities have been completed and the Commission is closed.

Upon OMB notification that the shutdown has ended, the Managing Director will initiate recall directions via a telephone/personal email tree.

All employees will be furloughed not later than 12:00 Noon EDT, except those who cannot be furloughed (i.e., Commissioners, excepted employees). Employees listed below may be retained beyond 12:00 Noon EDT, but only as needed to effect complete shutdown:

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<u>Office of the Chairman:</u>	Chief of Staff Counsel Senior Advisor, Legislative / Public Affairs Program Support Specialist
<u>Office of the Secretary:</u>	Secretary
<u>Office of the Managing Director:</u>	Managing Director Deputy Managing Director
<u>Office of the General Counsel:</u>	General Counsel
<u>Office of Consumer Affairs and Dispute Resolution Services:</u>	Director
<u>Office of the Administrative Law Judges:</u>	Chief ALJ
<u>Office of Equal Employment Opportunity:</u>	Director
<u>Bureau of Trade Analysis:</u>	Director
<u>Bureau of Certification and Licensing:</u>	Director
<u>Bureau of Enforcement:</u>	Director
<u>Office of Budget and Finance:</u>	Director
<u>Office of Human Resources:</u>	Director
<u>Office of Management Services:</u>	Director
<u>Office of Information Technology:</u>	Chief Information Officer / Director
<u>Office of the Inspector General:</u>	Inspector General

### Disposition of FMC Personnel During a Lapse in Appropriations

As of November 18, 2020, the Commission has 114 employees on board. The Commission has no employees that will be retained under its shutdown plan engaged in military, law enforcement, or direct provision of health care activities. Additionally, the Commission has no employees that are financed by sources other than annual appropriations.

The FMC has five (5) presidential appointee positions that are exempt from furlough. All five positions are currently filled. As PAS positions, provisions of law provide their exempt classification per OPM guidance.

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Eight (8) Commission employees are required to perform excepted activities under the terms of 31 U.S.C. §§ 1341 *et seq.* The positions are retained under the plan to perform activities that provide advice to the Chairman and Commissioners on the extent to which other activities may or may not be performed under statutory exceptions, and to protect property. In unusual circumstances, these employees may be retained to discharge the President's constitutional duties and powers to swear in a political appointee. As such, these employees are not subject to furlough for the necessary functions that support these requirements. These functions are limited and, in most circumstances, will not require full-time excepted status. These Commission employees remain restricted from performing all other non-excepted job functions until appropriations are restored. Employees required to perform excepted activities will not be paid until funds have been appropriated.

Retained employees are:

Managing Director  
Deputy Managing Director  
Chief of Staff  
General Counsel  
Chief Information Officer / Director, OIT  
Director, OBF  
Director, OHR  
Director, OMS

**Approved:** November 18, 2020

By: Michael A. Khouri, Chairman  
Federal Maritime Commission