



## **U.S. COMMODITY FUTURES TRADING COMMISSION**

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### **MEMORANDUM**

**TO:** Office of Management and Budget

**FROM:** Jeffrey Sutton  
Executive Director

**DATE:** September 29, 2025

**SUBJECT:** CFTC Plan for Lapse in Appropriations

Pursuant to Section 124, Agency Operations in the Absence of Appropriations, OMB Circular A-11 (August 2025), the Commodity Futures Trading Commission (CFTC) is submitting its plan for an orderly shutdown in the event of a lapse of appropriations.

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

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

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

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

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

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

- Assuming the plan is implemented on or after October 1, 2025, the CFTC has approximately 543 employees on board. There are an additional 18 employees in the Whistleblower Office (WBO), Office of Customer Education and Outreach (OCEO), and Division of Administration (DA) who are funded by resources other than annual appropriations.
- Of the 543 employees, 31 have been identified as excepted from the restrictions of the Antideficiency Act, because their work conforms to one or more of the excepted functions. This represents approximately 5.7% of the CFTC's staff. The justification for each employee's inclusion on the excepted list is set forth in the attached table.
- The 18 employees in the WBO, OCEO, and DA who are exempt from furlough because their operations are funded through a separate funding source unrelated to the CFTC's annual appropriation.
- Commissioners and the Chairman are PAS appointees (Presidential appointees with Senate confirmation) and most are exempt from furlough. Their respective staffs, however, are subject to furlough under the requirements of the Antideficiency Act.
  - With limited exceptions, all employees who are not identified as excepted would require no more than four (4) hours to conduct an orderly shutdown of agency operations.
- Of the 543 CFTC employees noted, there are no employees that are excepted because they are engaged in military, law enforcement, or direct provision of health care activities or because their compensation is financed by a resource other than annual appropriations.

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

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

1. A copy of the CFTC's Lapse Procedure, dated August 2025.
2. A chart containing a list of the 31 employees who have been determined to be excepted for purposes of the Antideficiency Act.
3. A summary of which CFTC functions will continue in the event of a lapse of appropriations, and which functions will cease during such a lapse.

Please feel free to contact me at (202) 418-5355 if you have any questions related to this matter.

**CFTC Procedure****Date:** August 2025**Description:** **Lapse in Appropriations** – this procedure describes the agency’s plan for operating in the event of an emergency shutdown due to a lapse in appropriations**Contact:** Jeffrey Sutton

<b>Lapse Plan Summary Overview</b>	
Estimated time (to nearest half day) required to complete shutdown activities:	0.5
Total number of agency employees expected to be on board before implementation of the plan:	543
Total number of agency employees expected to be furloughed under this plan (unduplicated count):	494
<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:	18
Necessary to perform activities expressly authorized by law:	
Necessary to perform activities necessarily implied by law:	
Necessary to the discharge of the President's constitutional duties and powers:	
Necessary to protect life and property:	31
<b>Brief summary of significant agency activities that will continue during a lapse:</b>	
The CFTC will perform work that will enable the commodities, futures and swaps markets to continue to operate and that will enable trading on those markets to continue.	
<b>Brief summary of significant agency activities that will cease during a lapse:</b>	
The CFTC will cease the vast bulk of its operations, including but not limited to most functions of the Divisions of Enforcement, Market Oversight, Clearing and Risk and Market Participants. Reports and work related to rulemakings and other responsibilities mandated by Dodd-Frank Wall Street Reform and Consumer Protection Act will also cease.	

**Purpose**

This procedure outlines the process the Commodity Futures Trading Commission (CFTC) will follow to shut down operations in the event of a lapse in appropriations and until additional appropriations are enacted into law. Under the Antideficiency Act (31 U.S.C. § 1341 *et seq.*), officers and employees of the federal government cannot, among other things, enter into

obligations in advance of appropriations or employ federal personnel except for excepted functions, or to accomplish the orderly suspension of agency operations. If no funds are available, the agency must initiate the orderly shutdown of agency activities not considered excepted functions.

### **Excepted Employees**

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

### **Employees Exempt from Furlough During a Lapse in Appropriations**

- HR will notify Presidential appointees that they will continue to work but their staff members will be subject to furlough unless they are needed to perform excepted functions.
- HR will notify employees of the Whistleblower Office (WBO), and certain employees in the Office of Customer Education and Outreach (OCEO) and the Division of Administration (DA) that they will continue to work because they have an alternative funding source.

### **Employees Subject to Furlough During a Lapse in Appropriations**

- HR will provide supervisors with furlough notices to be sent to all employees (including student volunteers, unpaid consultants, and individuals on Intergovernmental Personnel Act agreements (as applicable)) other than those described above as not being subject to furlough during a lapse in appropriations.
- Within the first four (4) hours after employees report to work<sup>1</sup> at his/her regularly scheduled tour of duty start time on the first business day following the lapse in appropriations, supervisors will send a furlough notice to all employees under their supervision other than those described above as not being subject to furlough during a lapse in appropriations.
- Employees (except those already on preapproved leave or an alternative work schedule) must report to work on the first business day following the initiation of a shutdown. Within the first four (4) hours after employees report to work at his/her regularly scheduled tour of duty

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

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

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

### **Contractors**

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

### **Notification to OMB**

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

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

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

- All employees who are not excepted must cancel meetings, hearings, and other previously arranged business and notify appropriate parties of the cessation of normal agency business due to a lapse in appropriations.
- Employees who are not excepted should document the status of cases and projects so they can be resumed, transferred, or otherwise appropriately handled when the funding situation is resolved.
- Employees who are not excepted must take appropriate steps to safeguard and secure all records and property to ensure protection of any classified or sensitive information.
- Employees who are not excepted must complete shutdown activities within four (4) hours after the employee reports to work at his/her regularly scheduled tour of duty start time on the first business day following the lapse in appropriations.

#### **Notification to Public and Staff**

- The Office of Public Affairs (OPA) will notify the public of closure and reopening of CFTC offices through the CFTC Website. The website will remain operational because it has already been fully funded prior to the lapse in appropriations. However, the website will generally not be updated or maintained during a lapse in appropriations.
- Employees are responsible for monitoring the news for information about the reopening of the agency after Congress appropriates funds.
- DA will also utilize the “Everbridge” system to notify employees who have signed up, when Congress appropriates funds with instructions for reopening the agency.
- Employees are expected to return to work on their next regularly scheduled workday, unless on preapproved leave, following enactment of appropriations legislation.

## CFTC Excepted Staff List

Office		Position	Location	Justification
COMM	1	Chairman Staff	DC	Advise Chairman on matters that the Commission may need to take up during the lapse in appropriations. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).
OLIA	1	Acting Director	DC	Given the role of this position in facilitating communication and relationships with congressional offices, it is excepted as necessary to to perform activities supporting a nomination or appointment pending during a lapse in appropriations. The employee (and others, to the extent necessary) performing these functions will conduct the minimum necessary for the President to carry out his nomination and appointment power. See Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations, 5 O.L.C. Op. 1, 5-6 (1981). This is particularly critical given that the CFTC is operating with only one Commissioner, a first in the Commission's history, who is the Acting Chair, and the CFTC's critical role in protecting the country's commodity and derivatives markets. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). This position may also be performing excepted functionsto address either an imminent threat to the protection of property related to the commodities and futures markets.



Office		Position	Location	Justification
OIA	1	Acting Director	DC	<p>This employee will monitor international financial markets, maintain communication with other participants in those markets, and coordinate CFTC activity with respect to other international participants. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. In this regard, as appropriate in the particular circumstances, this employee will endeavor to coordinate, facilitate, and execute engagement with non-U.S. authorities regarding any material event of which the CFTC is aware that could adversely and directly impact the financial or operational stability of a registered entity or registrant overseen by the CFTC and also has a connection with such non-U.S. authorities. A material event could include the failure of a registered entity or registrant to satisfy any of its requirements for continued authorization, qualification, registration, or regulatory relief where that failure could have a material adverse effect in the other jurisdiction, as well as any known adverse material change in the ownership, operating environment, operations, financial resources, management, or systems and controls of such registered entity or registrant. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). This employee will also perform the minimum necessary obligational authority for the President to carry out his foreign affairs power. Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations, 5 O.L.C. Op. 1, 5-6 (1981).</p>
OPA	1	Acting Director	DC	<p>This employee will monitor and respond to all press inquiries and publish critical information to the public, to include market participants, regarding the agency's ongoing efforts to monitor and regulate the commodities and derivatives markets during any lapse in appropriations. This function is crucial to ensuring market participants have continued confidence in the markets. Accordingly, this employee's work serves an essential role in the continued operations and regulation of commodities and futures markets. See 31 U.S.C. § 1342; see also OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>

Office		Position	Location	Justification
OIG	1	Inspector General	DC	<p>This employee will perform excepted functions only. The IG (or his designee during absences) will monitor and respond to the OIG hotline for allegations of waste, fraud, and abuse that constitute an emergency. This employee will immediately respond to information that indicates either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342, including confidential market information pertaining to markets under CFTC jurisdiction. Specifically, when the OIG receives an allegation related to the imminent threat to human life and/or the protection of property, this employee will evaluate the emergency and recall additional OIG employees, including investigators, as necessary, and will coordinate with local law enforcement and Department of Justice officials, as well as CFTC excepted personnel as necessary, to swiftly address the matter. These functions will ensure the protection of human life and property, including confidential market data. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>
DMO	1	Acting Director	DC	<p>This employee will oversee all DMO activities. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue, thus providing traders with access to well-functioning platforms for risk management and wealth creation. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>

Office		Position	Location	Justification
DMO	2	Associate Deputy Director, Systems Risk Section	DC	<p>This employee will oversee market system safeguards to detect/address major market disruption related to enterprise risk management, information security, capacity planning, systems operations, business continuity, disaster recovery, physical security and environmental controls. This employee will serve as the CFTC's point of contact for DCM, SEF, and SDR staff in the event of a cyber or technology disruption and coordinate with sector partners to ensure the orderly resumption of market activity, thus allowing traders access to critical risk management markets. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>
DMO	3	Associate Director, Market Intelligence Branch	DC	<p>This employee will oversee the overall market surveillance program to examine markets for misconduct detrimental to the Commission's mission of protecting market integrity which is essential to the national economy. This employee will monitor markets for potential manipulation or other violations of federal law and will serve as CFTC's point of contact with exchange/DCM market surveillance staff regarding potential threats to market integrity. This will help ensure that critical futures markets continue to function well, allowing traders to trade effectively and efficiently. This employee will be performing emergency or excepted functions, including those that will address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>

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

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

Office		Position	Location	Justification
DOE	2	Associate Director	DC	This employee oversees and coordinates the functions of the Division of Enforcement, including tracking electronic filings, analyzing and responding to all filings made, participating in hearings on substantive matters that cannot be postponed due to risk to property if not pursued timely, and responding to emergency actions that arise. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion
DOE	3	Associate Director	NY	This employee will track electronic filings, analyze and respond to all filings made, participate in hearings on substantive matters that cannot be postponed due to risk to property if not pursued timely, and respond to emergency actions that arise. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).
DOE	4	Deputy Director, Kansas City Regional Office	KC	This employee will track electronic filings, analyze and respond to all filings made, participate in hearings on substantive matters that cannot be postponed due to risk to property if not pursued timely, and respond to emergency actions that arise. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).

Office		Position	Location	Justification
DCR	1	Acting Director	DC	<p>This employee will be responsible for overseeing all DCR activities, including the oversight and overgoing monitoring of derivatives clearing houses designated as systemically important. In this capacity, and as appropriate given circumstances, this employee will identify, and respond to, market events that may materially affect these systemic institutions or other registered entities. Absent early identification and responsive mitigation actions, these events could have more severe and detrimental harm to the financial or operational stability of individual registered entities, or the derivatives markets in aggregate. A material event could include the failure of a registered entity or registrant to satisfy any of its regulatory requirements, as well as any known adverse material change in the registered entity or registrant. By excepting this individual, property related to derivatives market activities (including the capital of commercial end-users and retail investors) is further protected from harm or loss. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>

Office		Position	Location	Justification
DCR	2	Associate Director for Risk Surveillance	DC	<p>This employee will be responsible for overseeing all DCR activities, including the oversight and overgoing monitoring of derivatives clearing houses designated as systemically important. In this capacity, and as appropriate given circumstances, this employee will identify, and respond to, market events that may materially affect these systemic institutions or other registered entities. Absent early identification and responsive mitigation actions, these events could have more severe and detrimental harm to the financial or operational stability of individual registered entities, or the derivatives markets in aggregate. A material event could include the failure of a registered entity or registrant to satisfy any of its regulatory requirements, as well as any known adverse material change in the registered entity or registrant. By excepting this individual, property related to derivatives market activities (including the capital of commercial end-users and retail investors) is further protected from harm or loss. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>



Office		Position	Location	Justification
DCR	3	Deputy Director for Examinations/ Associate Director	CH	<p>This employee will be responsible for overseeing all DCR activities, including the oversight and overgoing monitoring of derivatives clearing houses designated as systemically important. In this capacity, and as appropriate given circumstances, this employee will identify, and respond to, market events that may materially affect these systemic institutions or other registered entities. Absent early identification and responsive mitigation actions, these events could have more severe and detrimental harm to the financial or operational stability of individual registered entities, or the derivatives markets in aggregate. A material event could include the failure of a registered entity or registrant to satisfy any of its regulatory requirements, as well as any known adverse material change in the registered entity or registrant. By excepting this individual, property related to derivatives market activities (including the capital of commercial end-users and retail investors) is further protected from harm or loss. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>

Office		Position	Location	Justification
DCR	4	Supervisory Risk Analyst	CH	<p>This employee will be responsible for overseeing all DCR activities, including the oversight and overgoing monitoring of derivatives clearing houses designated as systemically important. In this capacity, and as appropriate given circumstances, this employee will identify, and respond to, market events that may materially affect these systemic institutions or other registered entities. Absent early identification and responsive mitigation actions, these events could have more severe and detrimental harm to the financial or operational stability of individual registered entities, or the derivatives markets in aggregate. A material event could include the failure of a registered entity or registrant to satisfy any of its regulatory requirements, as well as any known adverse material change in the registered entity or registrant. By excepting this individual, property related to derivatives market activities (including the capital of commercial end-users and retail investors) is further protected from harm or loss. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>

Office		Position	Location	Justification
DCR	5	Risk Analyst	DC	<p>This employee will be responsible for overseeing all DCR activities, including the oversight and overgoing monitoring of derivatives clearing houses designated as systemically important. In this capacity, and as appropriate given circumstances, this employee will identify, and respond to, market events that may materially affect these systemic institutions or other registered entities. Absent early identification and responsive mitigation actions, these events could have more severe and detrimental harm to the financial or operational stability of individual registered entities, or the derivatives markets in aggregate. A material event could include the failure of a registered entity or registrant to satisfy any of its regulatory requirements, as well as any known adverse material change in the registered entity or registrant. By excepting this individual, property related to derivatives market activities (including the capital of commercial end-users and retail investors) is further protected from harm or loss. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>

Office		Position	Location	Justification
DCR	6	Associate Director	CH	<p>This employee will be responsible for overseeing all DCR activities, including the oversight and overgoing monitoring of derivatives clearing houses designated as systemically important. In this capacity, and as appropriate given circumstances, this employee will identify, and respond to, market events that may materially affect these systemic institutions or other registered entities. Absent early identification and responsive mitigation actions, these events could have more severe and detrimental harm to the financial or operational stability of individual registered entities, or the derivatives markets in aggregate. A material event could include the failure of a registered entity or registrant to satisfy any of its regulatory requirements, as well as any known adverse material change in the registered entity or registrant. By excepting this individual, property related to derivatives market activities (including the capital of commercial end-users and retail investors) is further protected from harm or loss. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>

Office		Position	Location	Justification
MPD	1	Acting Director	DC	<p>This employee will be responsible for overseeing all MPD activities. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. In the event of material event at a Commission registrant, the employee will consult with personnel at the impacted firm, staff of the appropriate self-regulatory organization (including designated contract markets and clearing organizations), other federal financial regulators, and the Commission's senior management to assess the potential impacts on the efficient operation of the derivatives markets. Employee will coordinate, as appropriate, with other Commission staff and self-regulatory organizations to assess the ongoing compliance with regulatory obligations, including regulations regarding the safeguarding of customer funds and counterparty margin collateral held by CFTC registrants, including futures commission merchants, swap dealers, and commodity pools. Employee will coordinate MPD's ongoing efforts to address material issues impacting the efficient operation of CFTC regulated markets. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>

Office		Position	Location	Justification
MPD	2	Associate Director, Examinations Branch	NY	<p>This employee will be responsible for overseeing all FCM financial integrity and reporting activities. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. Such activities include reviewing regulatory notices filed by market participants (including futures commission merchants and swap dealers) and monitoring market developments that may indicate a potential risk to the efficient operation of the derivatives markets and the approximate \$500 billion of customer funds held by futures commission merchants. In the event of a market or firm-specific development that may indicate a potential adverse impact on the operation of a registrant or the markets, the employee will contact personnel at the registrant, self-regulator organization, and other federal financial regulators to assess the situation and recommend courses of action to the Commission's senior management. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>

Office		Position	Location	Justification
MPD	3	Associate Director, Financial Requirements Branch	DC	<p>This employee will be responsible for overseeing all intermediary capital, margin and fund segregation reporting activities, as well as FCM financial integrity and reporting activities. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. Specifically, this employee will be performing work that will enable the commodities and futures markets to continue to operate and that will enable trading on those markets to continue. During major market or firm-specific events, employee will coordinate with Commission staff and self-regulatory organizations to quantify current exposures and potential future exposures to registrants, including futures commission merchants and swap dealers, by using financial reports and other information filed by registrants, including position data. Exposures will be compared to registrants' capital and available liquidity to assess registrants' ongoing ability to meet their financial obligations to clearing organizations, counterparties, and creditors to help ensure the efficient operation of the derivatives markets and to ensure the protection of customer assets. Employee will consult, as appropriate, with registrants, self-regulatory organizations, and other federal financial regulators (including prudential regulators). 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>
DA	1	Executive Director	DC	<p>As Chief Executive Officer of the CFTC, this employee will be required to execute tasks that are necessary and incidental to the duties of CFTC employees whose responsibilities address emergency or excepted functions, including those imminent risk to the safety of human life or the protection of property. Such issues relate to oversight of OED responsibilities, including security, payroll, financial, contract, and IT functions, and direction of adjustments to excepted employee designations as required by changes in the circumstances presented during a shutdown. The duties likewise will include advising and supporting the Chairman and Commissioners, as well as other excepted employees, on matters arising during lapse of appropriations.</p>

Office		Position	Location	Justification
DA	2	Chief Information Officer	DC	This employee will oversee all activities of IT to ensure that the excepted employees of the Commission have the electronic and technological capabilities necessary to perform. This employee's presence is necessary to provide critical support that is incidental but necessary to the work conducted by the excepted employees, including ensuring that the agency's IT infrastructure and systems are available and operating to protect CFTC physical and intellectual property and to supervise the designated contractors providing services to achieve such capability. This employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).
DA	3	Acting Deputy Chief Human Capital Officer	DC	This employee will be required to execute tasks that are necessary and incidental to the duties of CFTC employees whose responsibilities address emergency or excepted functions, This employee will provide ongoing support to the excepted activities of presidential appointees and excepted staff with respect to all matters relating to human capital, including union matters, payroll processing, issuance of furlough notices, and HR system services.
DA	4	Senior Procurement Officer	DC	As the Senior Procurement Officer, this employee will provide support and oversee all on-going contracts to include contracts that that must continue in order to protect human life and/or protection of property as required. The Senior Procurement Executive is a warranted Contracting Officer, and is the only individual on the Excepted Staff List with the authority to enter into, administer, and/or terminate contracts. Without this function, the agency will be unable to obtain contract support for responding to emergencies involving the safety of human life or the protection of property. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).



Office		Position	Location	Justification
DA	5	COOP Manager	DC	<p>This employee will provide physical security and oversight of the security of excepted staff and presidential appointees. (This employee also will accept mail and update hotline to notify staff to return to work.) This position is directly responsible for the physical protection of employees within CFTC Offices as well as property in all facilities. Additionally, responsibilities include continuity and emergency management in the event of unforeseen threats to CFTC property and employees. This employee's presence is necessary to address an imminent threat both to the safety of human life (managing the security of those employees who are deemed excepted and are required to report to work) and to the protection of property (managing the security of the Headquarters building and the property contained therein). This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>
DA	6	CISO	DC	<p>As the Chief Information Security Officer, this employee will ensure that the Commission's Technology Infrastructure remains protected and secure during a lapse in appropriations. This position is critical to provide continuous protection of federal IT systems to prevent unauthorized access, data breaches, and cyber threats that could jeopardize critical financial information and systems essential to national economic security. A lapse in cybersecurity vigilance could result in attacks compromising financial market data the Commission monitors, endangering property, and critical infrastructure vital to U.S. financial stability. This employee will be performing emergency or excepted functions, including those that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C. § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995).</p>

Office		Position	Location	Justification
DOD	1	Portal Program Manager	DC	<p>This employee will provide support to the CFTC mission divisions to ensure the effective flow of market data received via the CFTC Web Portal. The CFTC receives hundreds of regulatory filings each week via the CFTC Web Portal, including Form 40 filings from market participants that have recently acquired significant derivatives positions. In light of the potential imminent threat of the loss of these regulatory filings if technology-oriented data issues were to arise, the Commission has determined that the employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). CFTC notes that this employee is one of three DOD employees who are necessary to perform excepted functions. The CFTC receives and processes regulatory filings and data from a wide variety of sources that require varying ingestion and technical processes. The expertise associated with these varying processes does not reside with any one individual, and the Commission has determined that the three employees are necessary to perform these functions in aggregate.</p>

Office		Position	Location	Justification
DOD	2	Data Ingest Specialist	DC	<p>This employee will provide support to the CFTC mission divisions to ensure the effective flow of market data into databases at the CFTC. The CFTC receives hundreds of data files each day, including confidential regulatory data from exchanges, clearing houses, and other Commission registered entities. This employee will troubleshoot technology-oriented data issues associated with the receipt of such data, including any issues associated with the data loading process, to ensure the protection of such data from loss or imminent destruction. In light of the potential imminent threat of the loss of Commission data if such technology-oriented data issues were to arise, the Commission has determined that the employee will be performing emergency or excepted functions that address either an imminent threat to human life and/or the protection of property as provided for in 31 U.S.C § 1342. 31 U.S.C. § 1342 and OLC Memorandum for the Director of the Office of Management and Budget, Government Operations in the Event of a Lapse in Appropriations, OLC Opinion, at 2-3 (Aug. 16, 1995). CFTC notes that this employee is one of three DOD employees who are necessary to perform excepted functions. The CFTC receives and processes regulatory filings and data from a wide variety of sources that require varying ingestion and technical processes. The expertise associated with these varying processes does not reside with any one individual, and the Commission has determined that the three employees are necessary to perform these functions in aggregate.</p>

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

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

### Operational During a Lapse of Appropriations:

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

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

- Regulation 1.10 and 5.12 filings (financial reports of futures commission merchants (FCMs), introducing brokers (IBs), and retail foreign exchange dealers (RFEDs));
- Regulation 1.12 and 5.6 filings (notice provisions required by FCMs, IBs, and RFEDs);
- Regulation 1.15 filings (risk assessment reporting requirements);
- Regulation 1.16 filings (reports of accountants);
- Regulation 1.17 filings (capital requirements);
- Regulation 1.18 filings (current books and records);
- Regulation 1.65 and 5.23 filings (notice of bulk transfers);
- Regulation 39.19 (derivatives clearing organization reporting requirements);
- Regulation 40.6(a)(6) and (7) (emergency rule certifications);
- Regulation 40.10(h) (emergency changes certified by systemically important derivatives clearing organizations);
- Part 15 filings (general reporting requirements);
- Part 16 filings (clearing member reports);
- Part 17 filings (FCM reports);

- Part 18 filings (reports by traders);
- Part 19 filings (bona fide hedge position reports);
- Part 20 filings (large trader reporting for physical commodity swaps);
- Part 21 filings (special call provisions);
- Part 190 filings (bankruptcy rules);
- Chief compliance officer, swap valuation dispute, and risk exposure reports (per regulations 3.3(e), 23.502(c), and 23.600(c));
- Financial resource reports by swap execution facilities, designated contract markets, derivatives clearing organizations, and swap data repositories (per regulations 37.1306, 38.1101, 39.11, and 49.23); and
- Any emergency notification required to be reported to the Commission (such as system malfunctions, cyber security incidents, or financial emergencies).

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

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

#### Non-Operational During a Lapse of Appropriations:

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

- Most functions of DOE, including but not limited to: the review and investigation of victim complaints, initiating actions against wrongdoers and protecting any victim assets that may be at risk in such situations.
- Most functions of DMO, DCR, and MPD. In general, DMO, DCR, and MPD will not be processing filings that contemplate the possibility of Commission action,<sup>2</sup> including requests pursuant to:

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<sup>2</sup> Furthermore, as a general matter all applicable deadlines for potential Commission action are tolled unless otherwise determined by OGC.

- Regulations 1.47 and 1.48 (bona fide hedge requests);
- Part 30 (regulation 30.10 petitions for exemption and regulation 30.13 requests for certification);
- Part 37 (swap execution facilities applications, demonstrations of compliance with core principles);
- Part 38 (designated contract market applications, certifications of continued compliance in situations of merger or sale, and demonstrations of compliance with core principles);
- Part 39 (derivatives clearing organization applications, Commission review of swaps for determinations on clearing requirement, requests for orders regarding competition, and demonstration of compliance with core principles);
- Part 40 (rule and contract filings (both for self-certification and Commission approval), requests for confidential treatment of submissions, stays of certifications pursuant to regulation 40.12, and determinations related to making swaps available to trade);
- Part 41 (filing of notice-designated contract markets trading security futures products);
- Part 48 (foreign board of trade registrations, adjudication additional contracts for trading);
- Part 49 (swap data repository applications, registration of successor entities);
- Regulations 145.7 and 145.9 (requests for Commission records, petitions for confidential treatment of information submitted to the Commission, and appeals of FOIA decisions);
- Regulation 140.99 (requests for exemptive, no-action, and interpretive letters).

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

- Work relating to rulemakings and some other responsibilities mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203. Comment deadlines that expire during the lapse in appropriations will be deemed to be extended until the first business day after the restoration of appropriations unless the Commission indicates otherwise.
- Most functions of the Office of Legislative and Intergovernmental Affairs, OPA, Office of Equal Employment Opportunity, and Office of International Affairs except those identified as excepted to be performed by the respective Office Director during the lapse in appropriations.

- Most functions of DA and OGC, except to the limited extent that work is incidental to the excepted functions performed by other excepted employees. Meetings of the CFTC's various Federal Advisory Committees.