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Financial Administration
OPERATIONS IN LAPSE OF APPROPRIATION GUIDANCE

FOR THE COMMANDER:


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Purpose. This Circular provides information and guidance regarding the missions and functions of the United States Army Corps of Engineers (USACE) that may continue to be carried out in the absence of available appropriations as well as those that may not. The continuation of USACE Operations at current levels of staffing and spending depends on the U.S. Congress enacting appropriations or a Continuing Resolution (CR).

Applicability. This Circular applies to all USACE elements and Commands.

Distribution Statement. Approved for public release; distribution is unlimited.

Proponent and Exception Authority. The proponent of this regulation is the Directorate of Resource Management. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. Only the proponent of a publication or form may modify it by officially revising or rescinding it.

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1. Purpose. This Circular provides information and guidance regarding the missions and functions of the United States Army Corps of Engineers (USACE) that may continue to be carried out in the absence of available appropriations as well as those that may not. The continuation of USACE Operations at current levels of staffing and spending depends on the U.S. Congress enacting appropriations or a Continuing Resolution (CR).

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4. References.

a. 31 U.S.C. 1341, Limitation on expending and obligating amounts
<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title31-section1341&num=0&edition=prelim>

b. 31 U.S.C. 1342, Limitation on voluntary services
<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title31-section1342&num=0&edition=prelim>

c. 31 U.S.C. 1517, Prohibited obligations and expenditures
<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title31-section1517&num=0&edition=prelim>

d. 33 U.S.C. 701n, Section 5 of the Flood Control Act of 1941, Pub. L. 84-99, as amended

<https://www.congress.gov/84/statute/STATUTE-69/STATUTE-69-Pg186.pdf>

e. OMB Circular, A-11, Section 124, Agency Operations in the Absence of Appropriations

<https://www.whitehouse.gov/wp-content/uploads/2018/06/s124.pdf>

5. Records Management (Record Keeping) Requirements. Records management requirements for all record numbers, associated forms, and reports required by this regulation are included in the Army's Records Retention Schedule – Army (RRS-A). Detailed information for all record numbers, forms, and reports associated with this regulation are in the RRS-A at <https://www.arims.army.mil>.

6. Overview.

a. OMB Circular A-11, section 124 requires agencies to develop and maintain plans for an orderly shutdown in the event of a lapse of annual appropriations. This document provides information and guidance regarding the missions and functions of the United States Army Corps of Engineers (USACE) that may continue to be carried out in the absence of available appropriations as well as those that may not. The continuation of USACE Operations at current levels of staffing and spending depends on the U.S. Congress enacting appropriations or a CR. When a lapse in appropriations occurs, financial obligations are allowed only to conduct an orderly shutdown of operations or to continue those activities that are determined to be “excepted.” In the absence of annual appropriations, the USACE Organization must shut down all “non-excepted” activities until Congress passes a CR or enacts an appropriation bill to fund the USACE Organization. USACE operations that are funded with multi-year or no-year available funds can continue to operate until those

funds are exhausted. When the funds are exhausted, a determination must be made as to whether those activities are “excepted” or “non-excepted” activities.

b. Anti-Deficiency Act Compliance: The Anti-deficiency Act prohibits Federal agencies from incurring obligations in advance of, or more than, an appropriation, an apportionment, or a formal subdivision of funds. See 31 U.S.C. 1341, 1517. A Federal agency may not incur obligations when there is a lapse in appropriations, except under limited circumstances that involve the safety of human life or the protection of property. Unless otherwise authorized by law, an agency also may not accept the voluntary services of an employee. See 31 U.S.C. 1342. No disbursements may be made to liquidate obligations incurred for excepted activities until Congress provides an appropriation to cover these obligations. No obligations may be made to support a non-excepted activity during a lapse in appropriations, as that is a violation of the Anti-deficiency Act. New obligations may be charged to appropriation accounts for funds that do not expire for new obligation to the extent sufficient unobligated balances exist. Where funds were obligated in a prior fiscal year or are obligated during the lapse from an unexpired account, such funds may be disbursed if funds are available.

c. Definitions. All USACE Operations will fall into three broad categories: Exempted, Excepted, and Non-Excepted. Exempted Activities are those activities that are funded through multi-year or no-year non-expiring funds, or other funds that are not affected by a lack of appropriations; Excepted Activities, among other functions, are activities considered essential for the safety of human life, protection of property, or national security consistent with guidance provided by the Department of the Army or Department of Defense; Non-excepted Activities are activities that neither qualify as an exempted or excepted activities as defined above.

7. Lapse Summary Plan Overview.

Estimated time (to nearest half day) required to complete shutdown activities:	½ day
Total number of agency employees expected to be on board before implementation of the plan:	36,373
Total number of agency employees expected to be furloughed under the plan (unduplicated count):	938
Total number of employees to be retained under the plan for each of the following categories:	
Compensation is financed by a resource other than annual appropriations:	35,435
Necessary to perform activities expressly authorized by law:	0
Necessary to perform activities necessarily implied by law:	0
Necessary to discharge of the President’s constitutional duties and powers:	0
Necessary to protect life and property:	150
Brief Summary of significant agency activities that will continue during a lapse:	
Exempted activities and excepted activities will continue during a lapse in appropriation. Exempted activities will include those funded by multi-year or no year non-expiring appropriations that have sufficient funds, reimbursable orders funded by multiyear or no year non-expiring funds, non-appropriated funds (NAFs), foreign military sales cases and Host Nation Support begun prior to lapse in appropriation that are fully funded by a foreign government or otherwise conducted with funding that is not expiring. Excepted activities include Emergency Operations Center watch desk activities, reimbursable work for which the ordering agency has determined the work is “excepted”, litigation activities in support of excepted activities, foreign national employees governed by country to country agreement that prohibits furloughs, minimum USACE logistics activity personnel required to operate and maintain USACE facilities that will be occupied during the shutdown, protection and intelligence management through the Operational Protection Division and G-2 to advise and protect against imminent threats to human life, safety, and property, other civil works “excepted” activities, and other military activities as explained later in this document.	
Brief Summary of Significant agency activities that will cease during a lapse:	
Any activity not specifically cited as exempted or excepted are considered non-excepted and shall cease until the enactment of an appropriation.	

8. Execution.

a. The desired end state is to ensure that all USACE organizations are prepared to execute an orderly shutdown of non-excepted activities with affected employees identified and notified in a timely and respectful manner. To accomplish this, the USACE shutdown process will occur in four phases; USACE Commanders/Directors will not

implement any phases listed below unless a HQUSACE OPORD directs them to initiate the USACE shutdown plan. However, before any shutdown is to commence, several key tasks must first be performed. Those key tasks are as follows:

(1) All USACE activities will identify, by position, activities funded by multi-year or no year appropriations and the minimum work force necessary to support excepted activities. Excepted activities within USACE are identified in Section III of this document.

(2) USACE Commanders and HQ Principals (or a designated representative) will direct the execution of the shutdown plan at each level.

(3) All commands and HQ staff principals must verify local phone tree rosters are accurate to keep the work force informed and/or to recall personnel in case of emergencies.

(4) Leaders communicate current, accurate, consistent status and information to their respective employees.

b. Four phases.

(1) Planning and Preparation. Commanders must review activities to determine their funding source. Employees funded by multi-year or no year appropriations may remain in a duty status until available funds are exhausted. Activities not funded from multi-year or no year appropriations must be reviewed to determine if their missions meet the “excepted” requirement as outlined in Section III of this document. Once this identification is complete, subordinate units and HQs Principals will identify, by position, the personnel funded with multi-year or no year appropriations and the minimum workforce necessary to adequately support or maintain missions for excepted activities based upon guidelines set forth in Section III of this guidance.

(2) Notification. HQs Human Resources/Civilian Personnel Advisory Center (CPAC) will engage with unions and provide written notice that USACE may conduct the shutdown process. Union notice regarding furlough matters is provided prior to notifying employees. Excepted Civilian employees and non-excepted Civilian employees will be identified in time to begin informal notifications by supervisors. Generic employee furlough letters for formal notification will be provided to subordinate commands and to HQ Principals by HQ Human Resources.

(3) Shutdown/Notification/Continuation of Excepted Activities. Upon direction from HQ USACE, through command channels, all employees will report to work on the first workday after mid-night following a lapse in appropriation to receive their written furlough notices and perform the minimal duties required for an orderly shutdown. Written notification letters will be issued to both excepted and non-excepted employees by their supervisors. The expectation is that no more than four hours will be required to perform an orderly shutdown from the time the employee normally reports for duty. Non-excepted employees may not perform work other than for the period they report to duty. Typically, all employees performing similar duties will be released after working the same number of duty hours.

(a) As part of the notification process, supervisors will make every attempt to contact employees who are on TDY or on leave to advise them of their status as excepted or non-excepted by phone, text, email, fax, or other means and will also notify such employees by certified mail, with return receipt to the employee's home address of record.

(b) If supervisors are unable to reach excepted employees, they will change the status of those employees to non-excepted and notify them that they are being furloughed and place them on furlough.

(c) Non-excepted employees who are scheduled to telework may perform these shutdown activities from their telework location provided an existing telework agreement is in place. Commanders and supervisors may, at their discretion, allow other employees to conduct shutdown activities from a remote location, even without an existing telework agreement if the nature of the employee's shutdown activities is de minimus (i.e., can be completed in approximately 15 minutes).

(d) Employees will accrue pay for the time worked but will not be paid until such time as Congress makes appropriated funds available to compensate them for their period of service.

(e) Once shutdown activities are completed, non-excepted employees will be furloughed. Supervisory personnel at each USACE Command will ensure that all employees, both excepted and non-excepted, have been issued their individual notification letters prior to the end of their tour of duty. Further supervisory guidance will be provided.

(f) During the furlough period, non-excepted employees will be in a non-work, non-pay status and will not be permitted to serve as unpaid volunteers. They must remain away from the workplace and may not perform any official duties unless and until recalled. They may not telework or otherwise perform work remotely such as via Citrix, blackberry, or phone.

(4) Recall. During funding hiatus, furloughed employees should regularly check the Office of Personnel Management (OPM) website (www.opm.gov) or local media as to whether an appropriation or CR has been signed. Furloughed employees should report to work the next business day following enactment of a CR or an appropriation related to USACE or request leave. USACE UOC will notify all activities to execute their local alert rosters once notification is received.

9. Excepted, Exempted, Non-excepted Activities.

a. Exempted Activities. Civilian personnel working on activities funded with appropriations not impacted by the lapse in appropriations and that have sufficient funding will not be furloughed. Upon exhaustion of funds (that pay the employee's salary), employees will be furloughed unless the employee supports excepted activities identified below. Exempted activities will include those funded by:

(1) Multiyear and non-expiring direct appropriations that have sufficient funds.

(2) Reimbursable orders funded by multiyear or non-expiring appropriations.

(3) Non-Appropriated Funds (NAFs).

(4) Foreign Military Sales (FMS) cases and Host Nation Support begun prior to lapse in appropriation that are fully funded by a foreign government or otherwise conducted with funding that is not expiring.

(5) All active-duty uniformed military personnel are exempt from shutdown procedures and will report for duty.

b. Excepted Activities. The following activities are considered “excepted” activities, subject to Department of the Army or Department of Defense guidance, and will be performed using minimum staffing:

(1) Emergency Operation Center (EOC) watch desk activities.

(2) Reimbursable work for which the ordering agency has determined that the work is “excepted” based on their program authorities and appropriations.

(3) Civil works “excepted” activities that are to continue using minimal staffing without regard to available funding:

(a) Minimum operations and maintenance personnel of hydropower plants needed to protect against imminent threats to human life and property.

(b) Minimum operations and maintenance personnel of commercial locks needed to protect against imminent threats to human life and property.

(c) Operations of gates and other water control features at flood control projects to the extent necessary to protect against imminent threats to human life and property.

(d) USACE emergency response work (PL-84-99) to the extent necessary to protect against imminent threats to human life and property.

(e) Emergency support to civil authorities in response to disasters or other imminent threats to life or property with respect to responsibilities to state and local governments.

(f) Minimum operation of the Washington Aqueduct, assigned to the Baltimore District, to protect against imminent threats to human life or property.

(g) Any environmental remediation activity (includes FUSRAP) to the extent necessary to protect against imminent threats to human life and property.

(h) Activities necessary to control funds, record new obligations incurred in the performance of excepted activities, and manage revolving funds.

(i) All other Commander/Director identified excepted activities to protect against imminent threats to human life and property, or to continue support to maintain national security consistent with guidance provided by the Department of the Army or Department of Defense.

(4) Other military activities that are to continue without regard to available funding:

(a) Operations of the 249th Engineer Battalion to protect against imminent threats to human life and property or to continue support to maintain national security consistent with guidance provided by the Department of the Army or Department of Defense.

(b) Excepted (emergency) activities involving reserve component personnel to protect against imminent threats to human life and property or to continue support to maintain national security consistent with guidance provided by the Department of the Army or Department of Defense.

(c) Operation of the Army Geospatial Center (AGC) to protect against imminent threats to human life and property or to continue support to maintain national security consistent with guidance provided by the Department of the Army or Department of Defense.

(d) Operation of the Engineering Research and Development Center (ERDC) to protect against imminent threats to human life and property or to continue support to maintain national security consistent with guidance provided by the Department of the Army or Department of Defense.

(e) Operations of command-and-control systems, including computers, telecommunication centers, phone switches and secure conference capability to the extent necessary to support excepted activities.

(f) Operations of the following districts: Far East (CEPOF); Japan (CEPOJ); Afghanistan (CETAA), Trans-Atlantic Expeditionary District (CETED), Europe (CENAU) and Transatlantic Division (CETAD) to the minimum extent necessary to support excepted activities.

(g) Forward deployed commands executing Chairman of Joint Chiefs of Staff or Combatant Commander operations/deployment orders and those activities required to support threats to national security and the protection of life and property. This includes Forward Engineer Support Teams (FEST).

(5) Litigation activities associated with imminent or ongoing legal actions in support of excepted activities.

(6) Foreign national employees governed by country-to-country agreements that prohibit furloughs are excepted.

(7) Minimum USACE Logistics Activity (ULA) personnel required to operate and maintain USACE owned facilities that will be occupied during the shutdown period.

(8) ACTEDS interns will be furloughed unless otherwise excepted.

(9) Protection and intelligence management through the Operational Protection Division and G-2 to advise and protect against imminent threats to human life and property.

c. Manning to support Excepted Activities. Excepted activities must be minimally staffed to adequately support or maintain mission. Excepted activities will operate under a normal work schedule. Regular alternate work schedules will not be used to perform excepted activities. Telework may be permissible if the physical presence of the employee is not required to perform the excepted activities assigned to that employee. Support staff (includes staff not charging time directly to excepted activities, i.e., General and Administrative or Consolidated Departmental Overhead) at all Districts, Field Operating Activities (FOAs), Centers (including Engineering, Research and Development Center (ERDC) and Army Geospatial Center (AGC), Major Subordinate Commands and Headquarters (including HECSA/IWR) directly supporting excepted activities are to be reduced to the minimum required level. As a rule, support staff should not exceed 10% of the total authorized exempted and excepted staff.

d. Non-Excepted Activities. Any activity not specifically cited above is considered a non-excepted activity. Employees who would otherwise be engaged in non-excepted activities must be furloughed until the enactment of an appropriation or a continuing resolution.

10. Sustainment.

a. Pay Status. Employees “excepted” from furlough will not receive pay during the shutdown. Pay earned by personnel in an excepted status will be disbursed following an enacted CR or an appropriation related to USACE. “Non-excepted” personnel will be furloughed and placed in a “non-pay” status. Exempted employees will continue to receive pay until funding is exhausted.

b. Travel. Only travel appropriately paid for with available multi-year or no year funds, deployment, travel related to excepted activities, including declared emergency operation, is authorized. All other personnel on TDY will return to home station as soon as practical. USACE sponsorship or participation in a conference must be postponed or canceled unless it is to protect against imminent threats to human life and property or to continue support to maintain national security consistent with guidance provided by the Department of the Army or Department of Defense. Any USACE element hosting a conference and in charge of making the hotel arrangements must conduct an immediate review of the contract provisions regarding postponement, rescheduling, or termination to minimize liability to the government. In turn, immediate engagement with the hotel/facility must take place. After negotiations with the hotel/facility, advise scheduled attendees of the conference status (postponement/cancellation) so they can cancel hotel, airline and any other travel/logistical reservations and avoid liability. All USACE Proponent-Sponsored Engineer Corps Training (PROPSECT) classes are cancelled. PCS moves and travel deemed necessary to maintain USACE command and control and related directly to excepted functions is authorized. TDY voucher submissions will take place only after the shutdown period.

c. Contracts. Contractors performing under a contract that was fully obligated upon contract execution (or renewal) prior to the expiration of appropriations may continue to provide contract services whether in support of excepted activities or not. For excepted activities only (threats to national security and the protection of life and property against near-term threats), USACE may continue to enter new contracts, or place task orders under existing contracts, to obtain supplies and services necessary to carry out or support excepted activities, even though there are no available appropriations. It is emphasized that this authority is to be exercised only when determined to be necessary where delay in contracting would create an imminent and unacceptably high-risk to human life or property or endanger national security consistent with guidance provided by the Department of the Army or Department of Defense.