

DESIGNATION OF ESSENTIAL AND EXEMPT PERSONNEL

I. Purpose

This Directive establishes the policy for designating essential and exempt personnel to ensure continuity of Department of Homeland Security (DHS) operations and services, including during a lapse in funding/appropriations. The Directive establishes the policy for identifying essential and exempt personnel and notifying them of said designation and its requirements.

The Department uses the term “exempt” to describe functions and employees who may be required to continue to perform work to ensure continuity of DHS operations and services. Other agencies in the Federal Government use different terminologies, including “excepted.” To avoid confusion from using multiple terms, guidance in this document uses the single term of “exempt.” Additionally, either an “emergency furlough” or a “federal funding hiatus” may be used to refer to a lapse in funding/appropriations during which employees may be exempt. Reference to an “exempt employee” for the purpose of government shutdown is not to be confused with an employee designated as an “exempt” employee under the Fair Labor Standards Act.

II. Scope

- A. This Directive is applicable to all federal civilian employees of the Department.
- B. Component procedures for identifying and notifying essential and exempt personnel are consistent with this Directive.

III. Authorities

- A. Title 6, United States Code, (U.S.C.) Section 341, “Under Secretary for Management”
- B. Title 6, U.S.C., Chapter 1, Subchapter V, “National Emergency Management”
- C. Executive Order 12656, “Assignment of Emergency Preparedness Responsibilities,” November 18, 1988, as amended

D. National Security Presidential Directive 51/Homeland Security Presidential Directive 20, "National Continuity Policy," May 9, 2007

F. DHS Delegation 0106.3, "Delegation to the Director of the Office of Operations Coordination and Planning," May 31, 2012

G. DHS Delegation 00003, "Management Directorate Succession Order and Delegation of Authorities for Named Positions," March 23, 2012

IV. Responsibilities

A. The **Director of the Office for Operations Coordination and Planning (OPS)**:

1. Promulgates business continuity and emergency preparedness policies and plans that require the identification of mission essential functions (MEF) for all Components.
2. Ensures the development of policy guidance and procedures for the identification of positions required for the continued performance of DHS MEFs and Primary Mission Essential Functions (PMEFs). Personnel assigned to these positions are designated as essential employees.

B. The **Chief Human Capital Officer (CHCO)**:

1. Issues Department policy and guidance on documenting the designation(s) of essential personnel.
2. Institutes policies and procedures for Department management to notify employees occupying positions identified as essential and to inform them of their responsibilities.
3. Issues human capital guidance/procedures relating to a federal funding hiatus, including guidance for providing appropriate employee notifications.

C. The **Chief Financial Officer (CFO)** provides guidance in advance of a government shutdown or furlough which may impact the identification of exempt employees.

D. The **Chief Procurement Officer (CPO)** issues guidance to Components on notifying affected contractors of a government shutdown due to a federal funding hiatus and ensures that an effective level of warranted contracting personnel is available to support an orderly government shutdown or furlough and maintain exempt activities.

E. **Component Heads**: Ensure their Component has appropriate levels of essential personnel identified, designated, and trained, and that contact rosters are maintained and updated.

F. **Designated Essential Personnel** provide off duty contact information to supervisors and update it as necessary.

V. Policy and Requirements

A. Components designate personnel occupying positions that are required for the continuation of the Department's PMEFS and MEFs. These positions may require specific skills, knowledge, certifications or credentials. Categories of positions occupied by essential employees are:

1. **Mission Critical Personnel**. Those employees occupying positions and performing functions that are maintained under all circumstances to ensure the safety and security of the nation and its citizens. The critical nature of these positions is inherent in the position description (e.g., securing the Nation's borders, protecting the Nation's transportation system, etc.). These employees report for duty regardless of the emergency or operating status.
2. **COOP Personnel**. Personnel occupying positions identified to sustain an organization's PMEFS and MEFs. These personnel:
 - a. May conduct these activities at an alternate site, virtually or through the observance of an alternate work schedule.
 - b. Are expected to initiate and remain in contact with their Component during an emergency to maintain continuity of operations (COOP).
 - c. Include Emergency Relocation Group (ERG) members and alternate ERG members.
3. **Contingency/Incident Personnel**. Employees who are in positions identified for possible activation, as needed, depending on the emergency, including:
 - a. Personnel designated in positions that ensure three-deep backup to mission critical or emergency personnel
 - b. Subject Matter Experts (SMEs)
 - c. Personnel in positions pre-identified as part of a Crisis Action Team, and other operational teams established in response to a specific incident or situation

- d. Federal Emergency Response Officials
- e. Reconstitution Personnel in positions identified as part of a Reconstitution Staff
- f. Personnel in positions identified as part of a Devolution Staff
- g. Persons in positions identified in an order of succession

4. **Emergency Personnel.** Employees who are assigned to positions required to sustain a facility or function in the event of a localized situation, such as inclement weather, interruption of power, or a dismissal or closure of DHS operations or services. These employees are expected to work even when DHS applies dismissal or closure procedures. Because of the diversity in Component missions, employee occupations/skills, nature of the emergency, geographic location, and other factors, the designation of emergency personnel is the responsibility of the Component Heads. Component Heads designate, in advance of an emergency, those personnel that provide operational support or perform a support function (including security and maintaining infrastructure) which continues following the release/non-reporting requirements of other personnel.

5. **Exempt Personnel.** Employees in positions who are performing functions or activities that are “exempt” from work restrictions during a lapse in government appropriations. During such a lapse, DHS needs to shut down its government operations in an orderly fashion. Certain functions and activities that are permitted to continue are “exempt” from work restrictions specified in the Anti-Deficiency Act. Guidelines for exempt activities are set forth in the *DHS Procedures Relating to a Federal Funding Hiatus*.
<http://www.dhs.gov/xlibrary/assets/dhs-contingency-plan-component-summaries.pdf>

B. Components notify essential and exempt employees that they have been so designated. Although some employees identified as essential will likely be determined to be exempt employees, many will not since they do not perform functions or activities that are “exempt” from work restrictions during a lapse in government appropriations.

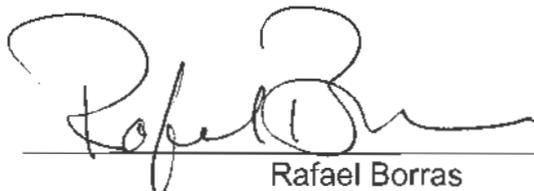
C. Components notify employees in a temporary duty travel status to end scheduled travel in an orderly and deliberate fashion unless otherwise directed by competent authority.

D. Components provide guidance to travelers who may be in or will be in official travel status during a federal funding hiatus. Employees who are on temporary duty assignments away from their normal duty stations at the time of an appropriations lapse

should make arrangements to return home sooner than planned wherever it is reasonable and practicable to do so. However, DHS makes determinations of reasonableness and practicality based on the length of the assignment and the time required for return travel, compared to the anticipated length of the appropriations lapse, so as to minimize the burdens of doing so.

VI. Questions

Address questions or concerns regarding this Directive to the DHS Office of the Chief Human Capital Officer.



Rafael Borrás
Under Secretary for Management



Date