NUCLEAR WASTE TECHNICAL REVIEW BOARD

AGENCY OPERATIONS IN THE ABSENCE OF APPROPRIATIONS CONTINGENCY PLAN

PURPOSE:

This contingency plan provides guidance on actions that may be required in the event of a funding hiatus and subsequent shutdown in Board operations caused by insufficient Board funding and the failure of Congress and the President to enact a regular appropriations bill or a continuing resolution which, together, result in insufficient funding for the Board.

This Contingency Plan describes the Nuclear Waste Technical Review Board's (Board) plan to shut down should there be no remaining funds from prior years, no new appropriation and the absence of a continuing resolution. Generally, the plan contemplates that: all employees, approximately 14, will come to work on the first workday of a funding lapse; individual furlough notifications will be issued to each employee not later than 12:00 pm (noon); and Board activities will be limited to shut-down activities only. The Board has no excepted employees, or more specifically, employees required to work to ensure the safety of human life or the protection of property and, therefore, no employees will be exempt from this plan. This plan may be modified as necessary.

BACKGROUND:

The failure of Congress and the President to enact full-year or interim appropriations would result in a *funding hiatus* for affected federal government agencies. During such a hiatus in funding, under the Antideficiency Act, operations at affected government agencies must cease, except in emergencies or in cases where an agency has access to non-expiring (i.e., no-year or multiyear) funds. The cessation of federal government operations brought about by a hiatus in funding is commonly referred to as a *government shutdown.* Such government shutdowns have occurred occasionally.

Public Law 100-203, section 5051, the 1987 amendments to the Nuclear Waste Policy Act, authorizes appropriations from the Nuclear Waste Fund to support the Board and its activities. Since the agency's inception, appropriation acts through fiscal years 2013 authorized funds for the Nuclear Waste Technical Review Board "to be derived from the Nuclear Waste Fund, and to remain available until expended." Subsequent Board appropriations have been two-year appropriations and remain available for two fiscal years. Provided the Nuclear Waste Technical Review Board has appropriated funding remaining available until expended or until the end of an applicable two fiscal year period, it is the Board's policy that, during a funding hiatus resulting in a general government shutdown, the Board will continue routine operations as long as Board funds are available and there is no legal constraint on their use.

GENERAL PROCEDURES:

When the Board receives notification that a funding hiatus is likely, which would result in a general government shutdown, the Executive Director or designee will advise the Chair and all Board staff members. However, a potential shutdown of Board operations will occur only after all prior-year Board funds are exhausted.

After the Administration has declared that a funding hiatus exists *and* after the Board has exhausted all available Board funding, the Board will begin an orderly shutdown of its operations and notify the Office of Management and Budget (OMB) of the action taken. The Board estimates that actions related to shutting down operations will require not more than one-half workday. It is expected that such a shutdown in Board operations would be temporary and of a short duration, resulting in no action being undertaken that will impede the orderly resumption of operations once funds are available.

SPECIFIC AGENCY ACTIONS:

The following actions will be implemented in the event of the shutdown of Board operations. This plan assumes that certain preparatory work will be done in advance so it will be possible for the Board to shut down on the first workday of a funding lapse. This may include: preparing a press release notifying the public that the Board will be closed; processing as much pending priority work as possible; arranging for the receipt of mail during the shut down; determining who is on leave or travel; rearranging travel plans as necessary or feasible; preparing individual furlough notices; notifying vendors of a possible shutdown; keeping employees informed of developments and other relevant matters.

1. The Executive Director or designee will notify the Chair and the Board staff that shutdown action is being initiated. The Board Chair or designee will notify Board Members that the Board has shut down due to a funding hiatus. Board members even though they are Presidential appointees, are not exempt from the shutdown plan. Board members are not "excepted employees" as defined by the Antideficiency Act. In addition, they are paid only for the days they work and their appointment does not represent an obligation incurred by the year. To avoid a violation of the Antideficiency Act and to minimize costs, Board members will be advised that no current or new work will be continued or undertaken by Board members during a shutdown of Board operations.

2. Unless other procedures have been established, on the first workday of a shutdown in Board operations, all staff should report to work as scheduled but will only engage in actions necessary to shut down the Board. The Executive Director or designee will inform staff of the status of funding and instruct them to limit work activities to those functions necessary for the orderly cessation of operations.

3. The Director of Administration will deliver furlough notifications to Board staff. The Board staff will acknowledge receipt of notification to the Director of Administration. Every effort will be made to deliver furlough notification to each employee; however, it should be noted that an employee could be furloughed without first receiving a

written notice of decision to furlough. If prior written notice is not feasible, then any reasonable notice is permissible. (Fax, cell phone message, text message, etc.)

4. Once employees have completed their assigned shut down tasks and received a furlough notice, they will be asked to leave the worksite. It is anticipated, that employees will be furloughed no later than 12:00 pm (noon) on the first day of the shutdown in Board operations. Employees will be advised to listen to the news media for word of recall from furlough. Additional furlough guidance may be available on OPM's web site.

5. As office shut down functions are completed and Board staff furloughed, the Executive Director will report to the Chair that all shut down activities have been completed and the Board is officially closed.

6. The Director of Administration will be responsible for notifying absent Board staff, as soon as possible, that they are being furloughed and will notify all staff members of the following conditions:

   - **ON ANNUAL LEAVE:** Notify Board staff members on approved annual leave that at the initiation of Board shutdown activities all leave_is cancelled for the duration of the shutdown and the staff member will be placed on furlough. If a Board staff member is scheduled for authorized annual leave at the initiation of the Board shutting down, once the furlough period has ended the Director of Administration or Executive Director, as appropriate, will make every effort to reschedule the annual leave for use before the end of the current leave year, especially if such leave may be subject to forfeiture at the end of the current leave year.

   - **ON SICK LEAVE:** Notify Board staff members on sick leave that at the initiation of the Board shutting down activities, all leave is cancelled for the duration of the shutdown. Such staff members will be furloughed for the full period of the Board shutdown and, when funds are restored, will return to duty or be placed on sick leave, as appropriate.

   - **ON CONTINUATION OF PAY (COP) LEAVE:** Board staff members absent on COP leave in connection with a job-related injury at the time of a shutdown in Board operations will be furloughed for the full period of the Board shutdown and, when funds are restored, will return to duty or be placed on COP leave, as appropriate. When funds are restored and the Board staff member has used the maximum allowable 45 days of COP leave, and remains incapacitated, he/she will be on leave without pay and instructed to file an application with the Department of Labor for receipt of workers' compensation payments.

   - **ON ADVANCED SICK OR ANNUAL LEAVE:** No sick or annual leave authorized in advance may be used during a shutdown in Board operations. Upon a lapse of appropriations, such leave will be cancelled and the Board staff member will be furloughed.

   - **ON TRAVEL:** A Board staff member in a travel status, including travel in connection with training, both foreign and domestic, will be contacted by the Director of Administration or the Executive Director and informed that they will be furloughed as of the initiation of the Board shutdown in operations. The traveler may be advised as

part of an orderly shutdown to hold in place for about one-day to determine if government operations will resume quickly or not. If government operations are expected to resume in a day, the traveler will be advised to shelter in place. However, the traveler will be notified that it is possible that they will not be reimbursed for per diem for that day, unless the funding lapse ends on that date. If it is determined that the government functions are unlikely to resume within one day, the traveler is instructed to return to their home or their duty station immediately. Once funds are restored, the Board staff member and the Director of Administration or Executive Director or will determine whether or not the business travel will resume.

- **AT LOCAL TRAINING:** Any Board staff member absent from the worksite in connection with training at a local facility will be advised that they will be placed on furlough for the duration of the shutdown in Board operations.
- **ON DETAIL:** A Board staff member on a non-reimbursable detail to other agencies must be notified of the exact date and time at which they are to be furloughed, i.e., at the initiation of the shutdown, and instructed to notify the appropriate officials of the agency to which they are detailed of their furlough status.

7. The responsible Board staff member will secure official files, documents, information technology equipment and other information, as they would if the agency closed for a long weekend.

8. Administrative processing of payroll for the pay period will continue as necessary to insure Board and staff members are paid on time for all work prior to the shutdown. Timekeepers will record time and attendance on all timecards for the current pay period through the final hour of the shutdown and submit the authorized timecards to the Director of Administration to be forwarded to the General Services Administration (GSA) National Payroll Branch (NPB). Designated NPB staff will remain on duty in order to perform payroll and financial services for its customers not affected by the lapse or that have available no-year or prior year funds.

   Additionally, the Board will work closely with its financial services provider, the U.S. Department of Agriculture's Office of the Chief Financial Officer, Financial and Information and Operations Division to ensure the Board does not violate the Antideficiency Act. The language and legislative history of the Antideficiency Act unambiguously prohibit agencies officials from incurring obligations in the absence of appropriations. The office of Legal Counsel of the Department of Justice issued an opinion dated August 16, 1995, that reaffirms and updates the 1981 opinion.

9. Telephone calls will be answered by an automated system with the message stating that the Board is closed due to a funding hiatus for affected federal government agencies.

10. If a Board meeting is scheduled during a funding hiatus, the Chair in consultation with the Executive Director will determine within a reasonable timeframe whether or not to cancel or postpone the meeting.

11. All payments scheduled to be paid during the shutdown in Board operations, which were authorized under prior appropriations, e.g., travel and per diem, contract payments, salary, etc., will be delayed until the shutdown is ended.
12. The Director of Administration will notify all contract vendors, e.g. for rented meeting facilities or non-government training, or any contractor scheduled to execute the terms of a contract during the anticipated shutdown in Board operations, that there is a funding hiatus, and give assurances that the contracted services will be rescheduled or resumed when funds are restored. Expenses incurred because of the cancellations will be paid when funds become available.

EMPLOYEE BENEFITS

UNEMPLOYMENT COMPENSATION BENEFITS:

Board employees may qualify for unemployment benefits while furloughed. Eligibility depends on the specific laws of the employee's State of residence, and varies from State-to State. Employees who collect unemployment benefits while on furlough will be required to repay the State for benefits received if Congress later acts to pay employees for the furlough period. The Director of Administration will ensure that the information and employment certification necessary to file unemployment compensation claims will be made available to furloughed Board staff members.

HEALTH BENEFITS COSTS:

Revised Federal regulations, which became effective on August 16, 1982, require all employees enrolled for coverage under the Federal Employees Health Benefits Program to pay the employee's share of the premium cost for the elected coverage for each pay period during which enrolled, whether in a pay or non-pay status. Therefore, enrolled Board staff members will incur indebtedness to the Government equal to the amount of their contribution for health benefits for each pay period in which no deduction is made. Once returned to pay status, the delinquent amount will be automatically deducted from the bi-weekly gross pay, in addition to the other authorized deductions, until the indebtedness is liquidated. Board staff members may cancel their health benefit enrollment at any time, thereby avoiding a debt accumulation beyond the pay period after the one in which the cancellation request is received in the Personnel Office. Reenrollment following the furlough period will not be permitted, however, until the Board staff member is again eligible due to the occurrence of a qualifying event, including open season. It should be noted however, that such a break in coverage would make the Board staff member ineligible to continue health benefits coverage under the Civil Service Retirement System if he/she retires within five years of the date of the cancellation.

LEAVE ACCRUAL:

For leave accrual purposes, the effect of the furlough period for the Board's full-time staff will be as described as follows:

1. Under current leave regulation, no sick or annual leave accrual will be credited for any pay period during the leave year in which a Board staff member accumulates 80 hours in a non-pay status. Therefore, the regular leave accrual will be credited to all Board staff for each pay period during part of which they are in a pay status, unless the furlough time or the combined furlough time and previously accumulated Leave Without Pay (LWOP) equals or exceeds 80 hours.

2. In addition, no leave will be earned or credited when a Board staff member is in a non-pay status for the full pay period. If furloughed Board staff member returns to duty for a partial pay period following a pay period in which they were in a non-pay status for the entire pay period, leave accrual will be pro-rated based on the number of days in a pay status.

RETIREMENT AND LIFE INSURANCE:
CSRS or FERS retirement deductions will not be taken during a furlough and amounts "missed" during the furlough will not be collected. The government matching payments for TSP and the government share of FERS payments will not be paid during a furlough and will not be made up after. For most employees these two benefits remain unaffected by the furlough period. However, employees for whom the furlough period, when added to previously accumulated LWOP, will cause the total non-pay time to exceed six months in the current calendar year or twelve consecutive months should contact the Director of Administration.

MILITARY RETIRED OR RETAINER PAY:
The Personnel Office will notify the appropriate finance centers of the furlough actions on any Board staff member receiving military retired or retainer pay.

This contingency plan for agency operations in the absence of appropriations has been developed in accordance with the Office of Management Budget's Circular, A-ll, Section 124 (2016) and will be reviewed and updated as required.

Nigel Mote 4/25/2017

Nigel Mote — Date
Executive Director

4/25/17

Debra L. Dickson — Date
Director of Administration