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# Interpreting Business Closure and Shelter-in- Place Orders

## Presenters

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# AGENDA

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2

- **Federal: Critical Infrastructure Sectors**
  
- **State and Local Orders**
  
- **Key Considerations**
  - **State and Local Law Enforcement and Prosecution Efforts and Trends**
  - **Essential Businesses**
  - **Minimum Basic Operations**
  - **Safe Passage and Business Comfort Letters**

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## CISA: CRITICAL INFRASTRUCTURE SECTORS TO REMAIN OPERATIONAL

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- Cybersecurity & Infrastructure Security Agency (“CISA”) is a U.S. federal agency overseen by the Department of Homeland Security (“DHS”).
- CISA has designated **16 critical infrastructure sectors** “whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety, or any combination thereof.”
- Local orders (e.g., County of Los Angeles) provide some evidence that suppliers of critical infrastructure sectors will be permitted to remain open (“*businesses that supply other essential business with the support or supplies necessary to operate*”).
  - ✓ **Consider providing suppliers a business comfort letter that sets out the legal basis for their continued operation.**

# CISA: CRITICAL INFRASTRUCTURE SECTORS TO REMAIN OPERATIONAL

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4

1. **Chemical:** Basic chemicals, specialty chemicals, agricultural chemicals, pharmaceuticals, consumer products.
2. **Commercial Facilities:** Diverse range of sites for business, entertainment, or lodging.
3. **Communications:** “Enabling function” across all critical infrastructure sectors (satellite, wireless, and wireline providers).
4. **Critical Manufacturing:** Primary metals; machinery; electrical equipment, appliance, and component manufacturing.
5. **Dams:** Hydroelectric power generation, municipal and industrial water supplies, agricultural irrigation, flood control.
6. **Defense Industrial Base:** Production and delivery of military weapons systems, subsystems, and components or parts.
7. **Emergency Services:** City police departments and fire stations, county sheriff’s offices, town public works departments.
8. **Energy:** Electricity, oil, and natural gas.
9. **Financial Services:** Depository institutions, providers of investment products, and insurance companies.
10. **Food and Agriculture:** Registered food manufacturing, processing, and storage facilities.
11. **Government Facilities:** Embassies, national laboratories, structures that house critical equipment, systems, and networks.
12. **Health and Public Health:** Protects humans and the economy from terrorism, infectious diseases, and natural disasters.
13. **Information Technology:** Hardware, software, and information technology systems and services.
14. **Nuclear Reactors, Materials, and Waste:** Research and test reactors, nuclear fuel cycle facilities, power reactors.
15. **Transportation Systems:** Aviation, highway and motor carrier, maritime transportation, mass transit, and freight.
16. **Waste and Wastewater Systems:** Supply of drinking water and wastewater treatment.

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## **CISA MEMORANDUM ON IDENTIFICATION OF ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS DURING COVID-19 RESPONSE, MARCH 19, 2020**

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5

- Guidance for companies operating in critical infrastructure sectors to identify which employees should be considered mission-critical.
- Where business closure and shelter-in-place orders have been issued, non-essential workers in critical infrastructure sectors will be required to work from home.
- Focus should be on workers that are “needed to **maintain continuity of operations** of the federal critical infrastructure sectors.” Ca. Exec. Order N-33-20 (Mar. 19, 2020).
  - ✓ **Consider providing employees with letters of safe passage that can be shown to law enforcement officers in the event they are stopped on their way to or from work.**
- Companies must continue taking strong action to maintain a safe working environment, including by implementing social distancing policies and other COVID-19 mitigation measures recommended by the Centers for Disease Control and Prevention.

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## STATE-LEVEL RESPONSES TO COVID-19

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- In the absence of binding federal requirements → patchwork of state responses
- Rapidly evolving landscape
  - March 19, 2020: California, Pennsylvania
  - March 20, 2020: Connecticut, Illinois, New York
  - More to follow . . .

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## STATE-LEVEL RESPONSES TO COVID-19

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7

- States fall into three general buckets:
  1. Strictest Restriction: state-mandated “stay-at-home”; “PAUSE” orders; broader closure.
    - 5 states: California, Connecticut, Illinois, New York, Pennsylvania
  2. Mid-level Restriction: state-mandated closure of specific businesses for a varying number of weeks. Business impact more limited.
    - 33 states: e.g., Iowa, Louisiana, Maine, Florida, New Jersey, Ohio, Washington
  3. Lowest-level Restriction: no state-mandated closures; “guidelines” or “recommendations”.
    - 12 states: e.g., Kansas, Oklahoma, Virginia, Texas, Tennessee

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- **Framework**

- Statewide Stay At Home Order – N-22-30 (March 19, 2020)
- Sample local orders
  - **Bay Area** – Shelter-in-Place Orders (March 16, 2020)
  - **County of Los Angeles** – Safer At Home Order (March 19, 2020)
  - **City of Los Angeles** – Safer At Home Order (March 19, 2020)



- **Statewide Stay At Home Order: N-33-20**
  - **Key Provisions**
    - Orders “all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors,” as outlined by DHS/CISA.
    - “I order that Californians in these 16 critical infrastructure sectors may continue their work.”
    - “The supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care.”
    - Additional sectors of industry may be designated critical to protect public health and well-being, in consultation with the Director of the Governor’s Office of Emergency Services.
  - **Does not supersede local orders that impose stricter limitations**



## ▪ **Local Orders: General Requirements**

- All persons must remain in their homes except to perform “essential activities,” including:
  - Performing work providing essential products and services at an Essential Business; and
  - Providing any services or performing any work necessary to the operations and maintenance of Essential Infrastructure.
- All non-essential businesses must cease operations that require in-person attendance by workers at a workplace.
  - *E.g.*, employers in San Francisco that do not provide essential businesses or government services must take all steps necessary for employees to work remotely from home to the extent possible.
- Essential Businesses must, to the greatest extent feasible, comply with Social Distancing Requirements.
  - Bay Area orders “strongly encourage” all Essential Businesses to remain open.



## ▪ **Local Orders: “Essential Businesses”**

- Healthcare operations (not including gyms or similar facilities)
- Grocers
- Newspapers, television, radio, magazine, podcast, and “other media services”
- Banks, credit unions, and related financial institutions
- Business providing mailing and shipping services
- Businesses that ship or deliver groceries, food, goods, or services directly to residences
- Businesses that supply products needed for people to work from home
- Restaurants and other food facilities that prepare and serve food, but only for delivery, drive-thru, and carry out business
- Airlines, taxis, and other private transportation providers providing transportation services necessary for activities of daily living and other expressly authorized purposes
- Hotels, motels, and similar facilities
- Military, defense contractors, and federally funded R&D centers
- Businesses that supply other essential businesses with the support or supplies necessary to operate

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- **Local Orders: “Essential Infrastructure”**
  - Like CISA, Los Angeles and Bay Area orders consider Essential Infrastructure to include:
    - Healthcare operations
    - Construction
    - Airport and port operations
    - Utilities
    - Oil refining operations
    - Roads, highways, and public transportation
    - Internet and telecommunications systems (including for global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services)



- **Local Orders: “Essential Functions and Operations”**
  - Business that are not required to close “may otherwise remain open for business and perform essential functions and operations.”
  - Bay Area orders define “**Minimum Basic Operations**” to include:
    - The minimum necessary activities to maintain the value of the business’s inventory, ensure security, process payroll and employee benefits, or for related functions; and
    - The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.
    - Does NOT create an exemption
    - Does NOT allow for full operations



- **Executive Order 2020-10 (March 20, 2020)**
  - “[A]ll individuals currently living within the State of Illinois are ordered to stay at home or in their place of residence except as allowed in this Executive Order.”
  - “Non-essential business and operations must cease” except “Minimum Basic Operations.”
  - “Minimum Basic Operations” defined as “the minimum necessary activities to maintain the value of the business’s inventory, preserve the condition of the business’s physical plan and equipment, ensure security, process payroll and employee benefits, or for related functions” and “to facilitate employees of the business being able to continue to work remotely from their residences.”

- “Essential Businesses and Operations” are “encouraged” to remain open, while complying with “Social Distancing Requirements”
- “Essential Businesses and Operations” include:
  - Healthcare and Public Health Operations (including numerous examples, ranging from pharmacies, hospitals, blood labs, and home healthcare services providers to veterinaries);
  - Human Services Operations (including examples such as long-term care facilities, rehabilitation services, vocational services, and adoption agencies);
  - Essential Governmental Functions (including examples such as emergency responders, child protection services, military, and court personnel); and
  - Essential Infrastructure (including examples such as food production, construction, airport operations, internet services providers, and utilities)
- FN 1: “Essential Businesses and Operations” intended to track March 19, 2020 CISA memorandum



- **“PAUSE” Executive Order (March 20, 2020)**
  - 10-point policy to assume uniform safety for New Yorkers; requires closure of *all* non-essential businesses statewide, effective 8:00 p.m. Sunday, March 22, 2020.
  - Requires “vulnerable populations,” including individuals age 70 and older, individuals with compromised immune systems, and those with underlying illnesses, to stay home and limit home visitation.
  - 90-day moratorium on residential and commercial evictions.
  - Supersedes prior statewide orders allowing some non-essential businesses to remain open, but at reduced capacity.

Final Executive Order forthcoming; overview located on New York State website, <https://www.governor.ny.gov/news/governor-cuomo-signs-new-york-state-pause-executive-order>.



- **10-point plan includes:**

- Closes all “non-essential businesses” statewide.
- Casinos, gyms, theaters, shopping malls, amusement parks, and bowling alleys are closed.
- Bars and restaurants are limited to delivery and takeout.
- Cancels all non-essential gatherings of individuals of any size for any reason.
- Mass transit will keep running, but people should not use it unless they absolutely must.
- In public, people must keep at least six feet away from each other.
- Orders sick individuals to stay home unless to receive medical care.

Final Executive Order forthcoming; overview located on New York State website,  
<https://www.governor.ny.gov/news/governor-cuomo-signs-new-york-state-pause-executive-order>.

## All Executive Closing All Non-Life-Sustaining Businesses (March 19, 2020)

- Focused on business behaviors as opposed to individual behaviors.
- Key provisions:
  - No person or entity shall operate a place of business that is not a life-sustaining business (excluding virtual or telework operations (e.g., work from home)).
  - Life sustaining businesses may remain open, but they must follow, at a minimum, the social distancing practices and other mitigation measures defined by the Centers for Disease Control to protect workers and patrons.
  - Extensive list of businesses determination  
<https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-Life-Sustaining-Business.pdf>.
- Formalized waiver process.

## DURATION AND ENFORCEMENT

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### ▪ Duration

- **California:** “until further notice”
  - Bay Area: Through April 7, 2020, but subject to modification
  - County of Los Angeles: Through April 19, 2020, but subject to modification
- **New York:** “until further notice”

### ▪ Enforcement Mechanisms

- **California** – misdemeanor (fine of up to \$1000 and up to 6 months imprisonment)
  - City and State Attorneys + law enforcement will “vigorously enforce” the order
- **New York**
  - Businesses that violate the order will be fined and forced to close
  - Does not intend to fine people
- **Pennsylvania** – citations, fines, license suspensions, and forfeiture of disaster relief aid
  - Enforcement actions against business to start March 23, 2020, 8:00 a.m.

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## “ESSENTIAL BUSINESS” AND “CRITICAL INFRASTRUCTURE”

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20

- Determining applicability of “essential business” and/or “critical infrastructure”  
<https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>
- Determining essential functions for business continuity
  - Essential activities
  - Essential travel
  - “Minimum Basic Operations”
- Business comfort and safe passage letters
- Seeking further clarification
  - Hotlines
  - Exclusions

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21



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