**Special Update – Regulatory and Legislative Update**

March 24, 2020

**Regulation and Enforcement**

**State-ordered shutdowns grow as the COVID-19 situation remains fluid**

Over the past week, individual states have issued emergency orders to restrict individual and commercial activity to stem the spread of the novel coronavirus (COVID-19). These terms of these orders vary, but in general they require residents to stay at home except to get food, health care, care for someone else, or work in a job deemed to be essential. As of now, at least 14 states have officially adopted some type of emergency order restricting people from working outside their homes except in essential jobs:

* California
* Connecticut
* Delaware
* Illinois
* Louisiana
* Maryland
* Massachusetts
* Michigan
* New Jersey
* New York
* Ohio
* Pennsylvania
* West Virginia
* Wisconsin

These restrictions beg the question, of course, of what constitutes “essential.” In general, states seem to be coalescing around a list published by the Department of Homeland Security at <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>. Not surprisingly, basically anything that supports transportation and logistics is covered. Indeed, the list of essential workers is fair extensive and potentially open to interpretation, but among the categories not covered are non-food retail and manufacturing that is not deemed to be critical. A definition of critical manufacturing is on the website.

The situation of course is very fluid. One organization that is monitoring the situation closely is the National Association of Manufacturers. NAM’s COVID-19 resources are available at <https://www.nam.org/covid-19-state-resources/>.

**FMCSA’s expanded enforcement relief covers a broader share of freight**

The Federal Motor Carrier Safety Administration on March 18 issued an expanded emergency declaration that adds to the categories of goods considered to be direct assistance in relief from the impacts of the novel coronavirus (COVID-19) pandemic. (*For details on the original March 13 declaration, see the Special Report distributed on March 16; unless otherwise stated, the terms of that declaration remain in place*.) The expanded emergency declaration, which still expires on April 12 unless lifted earlier or extended, also offers some flexibility on enforcement relief on loads that combine routine commercial transportation and qualifying transportation. Specifically, the expanded declaration grants emergency relief from the requirements of Parts 390 through 399 for transportation to meet immediate needs for:

* Medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19;
* Supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19 such as masks, gloves, hand sanitizer, soap and disinfectants;
* Food, paper products and other groceries for emergency restocking of distribution centers or stores;
* Immediate precursor raw materials-such as paper, plastic or alcohol-that are required and to be used for the manufacture of items in categories (1), (2) or (3);
* Fuel;
* Equipment , supplies and persons necessary to establish and manage temporary housing, quarantine , and isolation facilities related to COVID-19;
* Persons designated by Federal, State or local authorities for medical, isolation, or quarantine purposes; and
* persons necessary to provide other medical or emergency services, the supply of which may be affected by the COVID-19 response.

The original declaration stated that qualifying direct assistance did not include routine commercial deliveries, or transportation of mixed loads that include essential supplies, equipment and persons along with non-qualifying transportation. The March 18 declaration states that direct assistance “does not include routine commercial deliveries, including mixed loads with a nominal quantity of qualifying emergency relief added to obtain the benefits of this emergency declaration.“ What exactly is meant by “a nominal quantity of qualifying emergency relief” would appear to be a judgment call by a carrier subject to review by a roadside inspector or auditor.

Another gray area could be what constitutes an “immediate precursor raw material.” We do know from a frequently asked question (FAQ) page related to the emergency declaration is that livestock counts because it is a precursor to food. Carriers may never receive definitive answers on how to interpret the scope of the relief, so they might have to rely on their best judgment and be prepared to justify those decisions to inspectors or auditors.

**Resources**

* Expanded FMCSA emergency declaration (March 18, 2020): <https://www.fmcsa.dot.gov/emergency/expanded-emergency-declaration-under-49-cfr-ss-39023-no-2020-002>
* FAQs on current national emergency (March 19, 2020): <https://www.fmcsa.dot.gov/emergency/frequently-asked-questions-related-fmcsa-emergency-declaration-03192020>
* General FMCSA FAQs on emergency declarations: <https://www.fmcsa.dot.gov/emergency/general-emergency-faqs>
* Original FMCSA emergency declaration (March 13, 2020)
* <https://www.fmcsa.dot.gov/emergency/emergency-declaration-under-49-cfr-ss-39023-no-2020-002>