

Publications

3PLs and Motor Carriers Recognized as Essential Businesses, Adapt to Changing Regulations

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States and some cities are increasingly ordering the closure of non-essential businesses to mitigate the spread of the COVID-19 virus. This has raised a number of concerns for 3PLs and their carrier partners as to the impact of these orders on their businesses.

The good news is that these state orders deem 3PLs and their carrier partners as essential businesses, whose work is necessary to ensure the continued functioning of our nation. The majority of the state orders that have been issued either incorporate or refer to the U.S.

Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA) [Memorandum](#), which includes “Transportation and Logistics” as an essential function.[1] More specifically, the CISA memo lists the following categories as essential:

- Employees supporting or enabling transportation functions, including truck drivers, and
- Employees of firms providing services that enable logistics operations.

Some other states, such as Louisiana and Massachusetts, do not refer directly to the CISA memo, but incorporate its language or similar language deeming transportation and logistics essential. While other states have issued more limited orders that do not directly impinge on 3PLs and motor carriers’ operations—such as Kentucky’s, which only relates to retail establishments.

It appears that 3PLs and their motor carrier partners are, and will continue to be, largely exempted from these closure orders. However, all 3PL and motor carriers should carefully evaluate their respective states’ orders to ensure compliance both now and in the coming days and weeks as the situation evolves.

In further recognition of the essential nature of the industry, the FSCMA published on Thursday an emergency declaration exempting motor carriers and drivers from Parts 390 through 399 of the FMSCR. This provides hours-of-service regulatory relief for motor carriers and drivers

carrying the following categories of freight:

1. medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19;
2. 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;
3. food, paper products and other groceries for emergency restocking of distribution centers or stores;
4. 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);
5. fuel;
6. equipment, supplies and persons necessary to establish and manage temporary housing, quarantine , and isolation facilities related to COVID-19;
7. persons designated by Federal, State or local authorities for medical, isolation, or quarantine purposes; and
8. persons necessary to provide other medical or emergency services, the supply of which may be affected by the COVID-19 response.

The emergency declaration makes clear, however, that this exemption does not apply to routine commercial deliveries or to deliveries that include a “nominal quantity” of the identified categories in order to take advantage of the exemption. The declaration can be found [here](#).

If you have questions concerning state closure orders or the FCMSA emergency declaration, please contact your Vorys attorney.

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Vorys COVID-19 Task Force

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive COVID-19 Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.

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[1] For example, the orders issued by the governors’ of California, Connecticut, Delaware, Maryland, Michigan, and Ohio all directly incorporate the CISA memo, while Pennsylvania has expressly revised its list of essential business to comply with the CISA memo.