

## Federal Guidelines on Essential Infrastructure

*Robin B. Gray, ECIA COO and General Counsel*

The U.S. government through its Cybersecurity and Infrastructure Agency (CISA) issued on March 19, 2020, its [Guidance on the Essential Critical Infrastructure Workforce](#). The document is guidance that may be used by states to define what are considered to be “essential” businesses during the current Covid-19 pandemic. This document is a guideline (not mandatory) to be used by state and local governments in crafting their own responses to the health emergency. There will not be a uniform Federal mandate or directive. The U.S. Constitution reserves police powers over public health issues to the states. As a result, it is up to each state to define what is an essential business and exempt from closure orders. However, CISA has prepared this guideline to assist states in preparing their own response.

In general, manufacturers and distributors of electronic components would be considered essential if producing/distributing products/components that are needed by the industries as noted in the CISA document:

“Workers necessary for the manufacturing of materials and products needed for medical supply chains, and for supply chains associated with transportation, energy, communications, food and agriculture, chemical manufacturing, nuclear facilities, the operation of dams, water and wastewater treatment, emergency services, and the defense industrial base. Additionally, workers needed to maintain the continuity of these manufacturing functions and associated supply chains.”

“Workers who support the essential services required to meet national security commitments to the federal government and U.S. Military. These individuals, include but are not limited to, aerospace; mechanical and software engineers, manufacturing/production workers; IT support; security staff; security personnel; intelligence support, aircraft and weapon system mechanics and maintainers.”

“Personnel working for companies, and their subcontractors, who perform under contract to the Department of Defense providing materials and services to the Department of Defense, and government-owned/contractor-operated and government-owned/government-operated facilities.”

A few examples of end products that would be considered as essential within the context of these guidelines are medical equipment, computers, cell phones, airplanes, automobiles, petroleum monitoring equipment and many more. Electronic component manufacturers and up and down their supply chains (including distributors and raw material providers) would be considered essential for those enumerated industries. Keep in mind that states may expand or limit the list.

It is important to note that many of the state/local orders limit gatherings of more than a specified number of people. Businesses deemed essential are exempt from these size requirements as are businesses under a certain size. Rep firms are not likely to fall within the essential business exemption, but may be exempt due to size.

Most states have not prescribed or setup requirements for documentation of exemptions. A few states have a process for answering questions regarding exemptions.

It may be challenging for electronic component manufacturers and distributors to separate essential from non-essential operations. Businesses that have multiple locations or performing different functions at different locations (such as HQ, R&D, manufacturing location making products not deemed essential, call centers) will require compliance with more than state. To further complicate matters, state and local governments may expand or narrow the CISA guidelines or adopt their own definitions. ECIA has prepared a spreadsheet which provides a general outline of the application of state orders to the electronic component industry. However, these orders and requirements may change frequently. You should frequently check your state/local government's specific application to your operations.

CISA is an agency within the Department of Homeland Security. The CISA guidelines may be found at: <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>

A frequently updated guide on the application of state law to manufacturing may be found at the [National Association of Manufacturer's \(NAM\) link](#). As a manufacturing association member of NAM, ECIA has access to the work NAM is doing.