



Factors to Consider When Determining Whether a Business Qualifies as Essential in a State Executive Order

As more states begin to issue executive orders to “shelter-in-place” and/or close all non-essential businesses in an effort to stop the spread of COVID-19 (novel coronavirus), the RV Industry Association is working to assist our members in assessing and understanding the implications of these orders.

Specifically, there is significant ambiguity in many of the orders themselves, and confusion from state to state, as to which businesses constitute critical infrastructure and therefore, qualify as an essential business. The Cybersecurity and Infrastructure Security Agency (CISA), a division of the Department of Homeland Security, has issued its *Guidance on the Essential Critical Infrastructure Workforce* (<https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>) (“CISA Guidance”) to help governments and private sector partners clarify the scope of critical infrastructure and identify key personnel who are essential in operating critical systems and assets.

Several states have incorporated the categories described in the CISA Guidance or used this guidance as a starting point to develop their state-specific executive orders. Based on those orders and the CISA Guidance, RV Industry Association staff has put together the following factors that RV businesses may consider when determining whether their businesses qualify as essential or non-essential. Please note that this list is not exhaustive, and these orders are continuously evolving as governors and state agencies receive feedback from local governments and the business community.

- **First, please consult with regulators within your state and local area.** Also, consult your own stakeholders, especially legal counsel, before making decisions on how to best proceed with your business operations. The information provided by the RV Industry Association in this communication is not legal advice.
- You should review the information found at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19> (“Identifying Critical Infrastructure”) and the link above for more detailed information on CISA Guidance.
- Businesses throughout the RV supply chain and RV dealers may qualify as essential under the CISA guidelines in a limited capacity. For example, the state of Indiana considers RV manufacturing to be an essential business, and the CISA Guidance explicitly states, “automotive repair and maintenance facilities” as part of critical infrastructure, which would presumably include dealers’ service centers. You should review the CISA Guidance, Identifying Critical Infrastructure, and your state’s executive order to determine whether your business qualifies as an essential business. If you are a supplier that

provides critical supplies to a manufacturer in a different state, you should look to your own state's executive order. It is currently unclear as to whether a manufacturer that is deemed an essential business in one state would impact the "essential business" status of a supplier in another state under a stricter executive order. The Identifying Critical Infrastructure document does state, "It is important for governments to remember that the impacts of interruptions to critical infrastructure services may be felt far from your borders. The downstream impact of a restriction on workers in your community must be considered." It is also unclear whether an essential business in one state can ask an employee residing in another state, who is subject to different order terms, to cross state lines to come to work.

- Many campgrounds and RV parks provide lodging in some form for traveling workers covered by the CISA Guidance and seasonal RVers who may have no other place to go with their RV, as well as some long-term or extended stay RV park areas. These areas of campgrounds or RV parks may be deemed "essential" or critical infrastructure if they provide necessary shelter, even if temporary, for such consumers. Those campgrounds who operate or accept users from outside the state or area of a state in which the campground is located may very well be deemed non-essential, especially if such users are vacationing and not trying to abide by the shelter-in-place order. Governors and their state regulators are trying to limit travel during this time. Many state-wide orders are for essential travel only; many states may not deem travel to and from a campground essential.
- If your business determines that it qualifies as an essential business, your business must abide by the CDC health and safety guidelines and other applicable federal, state and local guidelines surrounding COVID-19. Practices such as reducing workforce to only critical team members, social distancing, and easy access to hand washing and hand sanitizer are recommended. It is important that each business reviews their state governor's order, their state's essential business list, and/or their state and county health departments' additional recommendations, as health and safety guidelines may change from order to order and state to state, and continue to check back as a state may revise its orders and guidelines periodically.
- If a business does stay open, its internal leaders and stakeholders must be able to point to why the business is essential. These state by state orders and essential business lists, while broad, allow for deeming certain businesses non-essential. If a state Health Department or other state official arrives at a business for inspection, that business must be prepared to show and prove it is following the proper health and safety guidelines, outlined by either the state or local entity.