

COVID-19 - AF&PA Activities and Resources

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CISA Guidance on the Essential Critical Infrastructure Workforce

The Department of Homeland Security has been issuing guidance identifying workers in the forest products industry as essential workers exempt from shelter in place orders. The guidance is intended to work during periods of community restriction, social distancing, or closure orders intended to protect public health.

Last week, AF&PA sent letters to Vice President Mike Pence, all 50 Governors, and key state and local policy associations asking them to consider pulp, paper mills, and converting plants, as well as other businesses involved in the distribution and sale of our products, as essential businesses, which would exclude them from restrictions imposed by shelter in place orders and allow them to continue operations. You can find a copy of the letter to VP Pence [HERE](#).

On March 23rd, CISA responded by updating its Guidance by adding a section on Critical Manufacturing and associated supply chains. The update, Version 1.1, can be found [here](#) – relevant text is copied below:

Critical Manufacturing:

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.

After the release of the updated CISA guidance, AF&PA sent a letter [HERE](#) acknowledging the importance of including these critical manufacturing supply chains.

AF&PA Press

AF&PA has issued recent press releases responding to increased consumer demand for tissue product, encouraging federal, state and local governments to recognize paper and wood products manufacturing facilities as “essential,” and applauding U.S.-Canada leadership for not closing the border to commerce -- thus recognizing the importance of cross-border supply chains, including for pulp and paper. You can find them on our website: <https://afandpa.org/media/covid19>.

Federal Legislative Resources:

COVID-1: Coronavirus Preparedness and Response Supplemental Appropriations Act

The first coronavirus response law provided \$8 billion for health and international programs and made \$7 billion in small business loans available.

- Link to text:
 - <https://www.congress.gov/116/plaws/publ123/PLAW-116publ123.pdf>

- Links to summaries:
 - https://www.everycrsreport.com/files/20200325_R46285_244a20e7c1e978b211cb80ac117817f28745b8cb.pdf
 - <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/Coronavirus%20Supp%20Summary%203.4.20.pdf>
 - <https://www.appropriations.senate.gov/imo/media/doc/Coronavirus%20Emergency%20Supplemental%20Summary.pdf>
 - <https://www.kff.org/global-health-policy/issue-brief/the-u-s-response-to-coronavirus-summary-of-the-coronavirus-preparedness-and-response-supplemental-appropriations-act-2020/>

COVID-2: Families First Coronavirus Response Act

A second package provides paid leave, tax credits, expanded unemployment and nutrition assistance, and free testing.

- Link to text:
 - <https://www.congress.gov/116/bills/hr6201/BILLS-116hr6201enr.pdf>
- Links to summaries:
 - <https://www.kff.org/global-health-policy/issue-brief/the-families-first-coronavirus-response-act-summary-of-key-provisions/>
 - <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/Families%20First%20summary.pdf>
 - https://www.appropriations.senate.gov/imo/media/doc/Coronavirus%20Supplemental%20Appropriations%20Summary_FINAL.pdf
 - <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/2020-03-17%20Emergency%20Paid%20Sick-Family%20Leave%20Fact%20Sheet%20Enrolled%20FINAL.pdf>

COVID-3: Coronavirus Aid, Relief, and Economic Security Act

A third package, if approved, would provide \$2 trillion in aid via public health spending, immediate cash relief for citizens, a lending program for small business, and relief for vulnerable industries.

- Link to text:
 - <https://www.congress.gov/116/bills/s3548/BILLS-116s3548is.pdf>
- Links to summaries:
 - https://www.appropriations.senate.gov/imo/media/doc/Coronavirus%20Supplemental%20Appropriations%20Summary_FINAL.pdf
 - <https://www.help.senate.gov/imo/media/doc/CARES%20Section-by-Section%20FINAL.PDF>
 - https://www.feinstein.senate.gov/public/_cache/files/4/9/49916a28-e23f-4bdf-b956-9fe13a4a7a48/CC69B794A04209CCEE2546BB70E5129E.cv3-summary.pdf

State Tracking Resources

AF&PA is tracking state-level developments. Comprehensive and frequently updated information can be found at the below links:

- [Council of State Governments Compendium](#)
- [NCSL State Isolation and Quarantine Statutes](#)
- [National Governor's Association aggregate of state responses](#)
- [NCSL State Action on COVID-19](#)
- [NAM State-by-State COVID-19 Response](#)

Other COVID-19-related Issues of Note:

IRS Filing and Payment Relief Regulation and Guidance

In [Notice 2020-18 \(PDF\)](#), the Treasury Department and the Internal Revenue Service (IRS) announced special Federal income tax return filing and payment relief in response to the ongoing Coronavirus Disease 2019 (COVID-19) emergency. [Linked here](#) are answers to frequently asked questions related to the relief provided in the Notice. These questions and answers will be updated periodically and are designed to be a flexible tool to communicate information to taxpayers and tax professionals in this changing environment.

Truck Weights

AF&PA and industry allies have successfully included language to clarify that states can issue special permits for overweight vehicles and loads to allow for the free flow of critical relief supplies during the current coronavirus epidemic for the duration of the fiscal year. This grants states greater flexibility to allow heavier trucks on interstate highways and increases the efficiency of the industry's supply chain.

FMCSA Hours of Service Update

On March 13, the Federal Motor Carrier Safety Administration released a waiver to the Hours of Service Rule for commercial vehicle drivers transporting materials related to the COVID-19 outbreak in all 50 states and the District of Columbia. This declaration exempted medical supplies and food products specifically, yet it was unclear how shipments of paper products and manufacturing inputs were considered. On March 18, the FMCSA revised and expanded the emergency declaration. The revised declaration is much more amenable to paper products and provides further clarity for the industry's shipments. However, more clarity regarding whether pulp and paper-based packaging is included in the exemption is needed. AF&PA sent a [letter](#) to FMCSA requesting that pulp and paper-based packaging materials are explicitly included in the text of the declaration.

On March 25, the FMCSA published a document that offers some guidance on the questions highlighted by AF&PA:

Is wood pulp covered under the expanded emergency declaration?

Wood pulp is covered if it is being used as a precursor to one of the essential items listed in the exemption as follows: (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 or (3) food, paper products and other groceries for emergency restocking of distribution centers or stores;

Does the Declaration cover packaging for food -- for example, produce containers?

Yes, packaging is covered as a precursor necessary to the production and transportation of products covered under the emergency exemption.

EEOC Guidance on Worker Temperature Tests

On March 18, the U.S. Equal Employment Opportunity Commission (EEOC) issued guidance to clarify that employee temperature testing for COVID-19 at operating work sites at this time would not constitute a “medical examination” prohibited by the Americans With Disabilities Act (ADA). This guidance is responsive to a request AF&PA made to the Administration following up on member concerns. The guidance also addresses other workplace safety issues pertinent to facilities operating during the COVID-19 pandemic, such as how much information an employer may request from an employee who calls in sick, and whether an employer can require a sick employee to go home, require a doctor’s note to certify that an employee is fit to return to work, and screen job applicants for COVID-19. You can access the new EEOC guidance linked [here](#).

Trade – Canada and Mexico

On March 18, President Trump and Canadian Prime Minister Trudeau agreed to close the border separating the two countries temporarily to non-essential travel. The restrictions do not apply to trade in goods. On March 20, the U.S. and Mexico likewise announced restrictions on non-essential travel beginning March 21.

USTR Section 301 China Tariffs

USTR issued a press release ([here](#)) and a Federal Register notice ([here](#)) announcing that it is seeking comments on potential modifications to existing Section 301 China tariffs in line with COVID-19 pandemic. USTR’s release stresses that submissions, and consideration of those submissions, would be limited to products subject to the tariff actions and relevant to the medical response to the coronavirus.

USTR’s notice indicates that any such changes would likely be in the form of modifications to existing tariff lists, as opposed to exclusions. That view is supported by explicit statements that these modifications would be separate from existing exclusions processes currently still running for List 3 and List 4A products. Comments should be submitted using the Federal eRulemaking Portal (www.regulations.gov) on Docket No. USTR-2020-0014. USTR is requesting that comments be submitted “promptly” but no later than June 25, 2020.

EPA Compliance Guidance

On Thursday, March 26, U.S. EPA's Office of Enforcement and Compliance Assurance (OECA) issued a temporary policy on how the Agency would use enforcement discretion to address noncompliance with environmental requirements that results from the COVID-19 pandemic. EPA's press release is [HERE](#), and the policy is [HERE](#)). This OECA guidance addresses many of the concerns AF&PA raised informally with a number of EPA officials. The guidance is retroactive to March 13.

Key points include:

- **Duration:** The policy is temporary but applies to actions/omissions that occur while it is in effect, even after the policy is terminated. Its scope will be reassessed on a regular basis, and EPA will provide at least seven days' notice of its termination.
- **Conditions:** Generally, if compliance is "not reasonably practicable," facilities should minimize the effects and duration of noncompliance, and identify the nature and dates of noncompliance, how COVID-19 caused the noncompliance, steps taken to return to compliance, and document this.
- **Routine compliance monitoring and reporting is covered:** Specifically, if routine monitoring and reporting obligations -- including compliance monitoring, integrity testing, sampling, laboratory analysis, training, and reporting or certification -- is "not reasonably practicable" and "COVID-19 was the cause of the noncompliance" entities should maintain the requested documentation internally for possible later inspection by the state or EPA. EPA does not expect to seek penalties in situations where they agree that "COVID-19 was the cause of noncompliance and the entity provides the supporting documentation to the EPA upon request."
 - Absent exigent circumstances, once the policy is no longer in effect, EPA does not plan to ask facilities to "catch-up" missed monitoring or reporting if it pertains to a requirement with intervals of less than three months.
 - For semi-annual or annual obligations, EPA expects entities to take reasonable measures to resume compliance activities as soon as possible and note the reason for the delay when submitting late information.
- **States:** As many States and tribes run delegated environmental programs, the policy acknowledges they may take a different approach.
- **Settlement agreements:** For EPA settlement agreements, OECA advises parties to use notice procedures that are set forth therein; EPA intends to treat routine monitoring and reporting obligations the same way as described above. However, for those consent decrees imposed by courts, the courts retain their own jurisdiction.
- **Exclusions:** The guidance does not apply to criminal violations, Superfund and RCRA corrective actions, accidental releases, and imports.