

SHELTER IN PLACE IMPACTS ON MANUFACTURING AND DISTRIBUTION FACILITIES

Related Professionals

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It is likely that economic developers are hearing concerns from and questions about the impacts a state level shelter in place order may have on manufacturing and distribution facilities. Office staff can often work from home. This is not the case for manufacturing or distribution operations.

Particularly the primary concern is what impacts such an order might have on a company's business operations. This email is provided as a beginning point for this analysis.

There are several things that we know at this point in time:

- This is a very fluid and evolving situation. Advisories and guidance on these matters are coming forward every day. SHEDC and NP are staying abreast of this information. Additional advisories and, more definitive information will be provided as it emerges.
- In North Carolina, no order of this nature has yet been issued. If a shelter in place order is issued, we think it would be done at the state level and not the federal level, in that circumstances vary from state to state.
- NP is aware that a shelter in place executive order is being drafted in the North Carolina Governor's office. Some attorneys in our Raleigh office have been providing some input as to the terms of any such executive order.
- Even though an executive order may be in the process of being drafted, it may or may not be executed and issued. The North Carolina Chamber of Commerce is advocating against any shelter in place order, and it is mobilizing members of that Chamber to also communicate to the Governor's office opposition to such an order.
- Although some general guidance is available now, nothing will be certain until we can see the terms of any executive order. Only then will

we know exactly what those terms will be, and therefore the impacts on any company which may be inquiring of you about this.

To the extent that what other states have done to this point or guidance from the federal government might provide some insights into what might be the case in North Carolina, one could consider the following:

There are 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety, or any combination thereof. Presidential Policy Directive 21 (PPD-21); PPD-21 identifies these 16 critical infrastructure sectors as:

- Chemical Sector
- Commercial Facilities Sector
- Communications Sector
- Critical Manufacturing Sector
- Dams Sector
- Defense Industrial Base Sector
- Emergency Services Sector
- Energy Sector
- Financial Services Sector
- Food and Agriculture Sector
- Government Facilities Sector
- Health care and Public Health Sector
- Information Technology Sector
- Nuclear Reactors, Materials, and Waste Sector
- Transportation Systems Sector
- Water and Waste water Systems Sector

The broader definition of critical infrastructure is defined in the USA Patriot Act of 2001 (42 U.S.C. 5195c(e)). 'Critical infrastructure are any "systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters." This definition is appropriately broad to include a wide range of stakeholders who either directly or indirectly enable the functionality of infrastructure systems.'

Although it is not clear at this time, it seems to me that the production facilities of companies, which provide materials and products to the above 16 critical infrastructure sections, might also be exempted from any shelter in place order. So it would be important that someone in a company should identify all of the customers of that company which would be included within the above 16 sectors.

If North Carolina does become subject to a shelter in place order, we have identified a contact within the North Carolina Department of Public Safety to which any request for exemption from such an order would have to be addressed. From what we know at present, it appears that the following information would have to accompany any request for exemption:

1. Business name
2. Point of contact with the company (name, email address, phone number(s) and physical address(es).
3. Nature of the business and why the company would be critical to maintain continuing operations.
4. Reference to the business website.

There are two sources to which you can go for further information. These are the following:

- Most easily read and interpreted guidance is here: <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>
 - More difficulty in absorbing but very broad guidance is here: <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>
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