

Dear NWRA Members,

We are all in uncharted territory as it relates to a global pandemic. Rest assured, NWRA is here to help guide the industry through this and clarify what sometimes can be convoluted regulatory language written in “bureaucrat-ese.”

***** AT THE END OF THIS EMAIL, YOU WILL FIND LINKS TO FOUR DOCUMENTS THAT YOU SHOULD DOWNLOAD AND PRINT OUT FOR EACH OF THE VEHICLES IN YOUR FLEET TO CARRY IN ORDER TO ENSURE CONTINUITY OF OPERATIONS. *****

This past week, the Department of Homeland Security (DHS) and the Federal Motor Carrier Safety Administration (FMCSA) issued new guidance that directly impacts our industry.

DHS

Under the [DHS CISA Guidance on the Essential Critical Infrastructure Workforce](#), the solid waste industry was included under two categories: “Public Works” and “Transportation and Logistics.” This provides guidances, not mandates, for the states and as such determinations will vary from state to state.

The public works category is key for the solid waste industry since it is a broad declaration that would include both our services and supplier members. Suppliers would fall under the “support” provision. It is understood that our services members cannot survive without our supplier members and vice versa.

“Public Works” category:

- Support to ensure the effective removal, storage, and disposal of residential and commercial solid waste and hazardous waste

“Transportation and Logistics” category:

- Truck drivers who haul hazardous and waste materials to support critical infrastructure, capabilities, functions, and services

FMCSA

Under the FMCSA Emergency Declaration 2020-002, the waste and recycling industry is included. The waste industry is expressly named in the FAQs. The recycling industry would fall under the “immediate precursor raw materials—such as paper, plastic or alcohol—that are required and to be used for the manufacture of items” since the recycling industry supplies feedstock to the paper industry.

The declaration is as follows:

<https://www.fmcsa.dot.gov/emergency/expanded-emergency-declaration-under-49-cfr-ss-39023-no-2020-002>

This Emergency Declaration provides regulatory relief for commercial motor vehicle operations providing direct assistance in support of emergency relief efforts related to the COVID-19 outbreaks, including transportation to meet immediate needs for: . . . (2) supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19 . . .

The FAQ issued by FMCSA clarifies this specifically with regard to our industry:

<https://www.fmcsa.dot.gov/emergency/frequently-asked-questions-related-fmcsa-emergency-declaration-03192020>

Are haulers of household waste and medical waste covered under the terms of the declaration?

Yes, transportation for removal of both household and medical waste is covered as “supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19.”

Are livestock a covered commodity under the terms of the emergency declaration?

Yes, Livestock are covered as a precursor to food. The emergency declaration covers **“immediate precursor raw materials—such as paper, plastic or alcohol—that are required and to be used for the manufacture of items”** including food needed for the emergency restocking of stores. (*emphasis added*).

The Bottom Line

This does not mean business as usual. Businesses should be wary about trying to use an exemption for legitimate purposes in direct support of relief as an opportunity to continue unrelated normal business operations. A company still would have to show that the service they are providing benefits *community safety, sanitation, and prevention of community transmission of COVID-19* per FMCSA.

Waste and recycling collection can continue as normal. Suppliers who sell, service, and repair vehicles, equipment, etc. in furtherance of this can continue doing so. Any other activities that suppliers may be regularly engaged in that are not in support of this, though, would not fall under this exemption. NWRA recommends that supplier members check with appropriate authorities with regard to any activities outside of directly supporting the waste and recycling sector.

The DHS CISA is guidance and not binding, but is generally followed by state, local, and tribal authorities. Please check with local authorities.

***** PLEASE PRINT A COPY OF EACH OF THESE DOCUMENTS TO BE CARRIED IN EVERY VEHICLE IN YOUR FLEET TO ENSURE CONTINUITY OF OPERATIONS *****

DHS / FMCSA CLARIFICATION LETTER FROM ASSOCIATION COUNSEL

https://wasterecycling.org/resource/resmgr/letters/DHS_FMCSA_Clarification_Lett.pdf

TRUCK DASHBOARD PLACARD

https://wasterecycling.org/resource/resmgr/letters/Vehicle_Dashboard_Placards.pdf

FMCSA DECLARATION AND FAQ

https://wasterecycling.org/resource/resmgr/letters/FMCSA_Declaration_and_FAQ.pdf

DHS CRITICAL INFRASTRUCTURE WORKFORCE

https://wasterecycling.org/resource/resmgr/letters/Guidance_on_the_Essential_Cr.pdf

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