In response to the COVID-19 pandemic and its threat to public health from in-person contact, as well as the significant impact on financial markets, nearly every state, including every state in New England, has issued orders limiting business operations (closure orders, stay-at-home orders, or shelter-in-place orders).

Except for Rhode Island, all of the orders across New England reflect federal guidance issued by the Department of Homeland Security's Cybersecurity & Infrastructure Security Agency (CISA), regarding which business sectors constitute the “critical infrastructure” and therefore should remain open. While each of the states has adopted the CISA sectors as the basis for which businesses may continue in-person operations, each state also has separate variances from the core
The CISA sectors that may continue in-person operations fall into 14 categories:

- Health care/public health
- Law enforcement, public safety, and first responders
- Food and agriculture
- Energy
- Water and wastewater
- Transportation and logistics
- Public works
- Communications and information technology
- Community and government operations
- Critical manufacturing
- Hazardous materials
- Financial services
- Chemical
- Defense industrial base

“Critical manufacturing,” the broadest category, is limited to the manufacture of products needed for the other sectors – health care, transportation, energy, communications, food, chemical manufacturing, nuclear facilities, the operation of dams, water and wastewater treatment, emergency services, and defense. CISA guidance also allows construction to continue, but only construction of critical infrastructure (meaning facilities supporting the other key sectors, such as hospitals or power stations). [Click here for the full CISA guidance.](#)

In all the New England states, in-person business that remain open must implement the U.S. Centers for Disease Control (CDC) and state-level counterparts’ guidelines for workplaces, including social distancing, regularly cleaning and sanitizing, hand washing protocols, and ensuring sick employees stay home. [Click here for the CDC guidance.](#)

While the broad categories are the same, each state has implemented the closure order a bit differently, particularly regarding supply chains for exempted businesses, and each has different enforcement.

The specifics for each state are detailed below. [Click here](#) for a chart summarizing the key elements of each’s state closure order.
**Maine:**

Under the “Order Regarding Essential Businesses and Operations” issued on March 24, 2020, Governor Janet Mills ordered all businesses to make their best efforts to implement social distancing requirements in and around their facilities, including six-foot spacing, making hand sanitizer and sanitizing products available, operating hours for elderly and vulnerable customers, and posting online whether a facility is open. Unlike the other orders in New England, however, Governor Mills’ order only instructs non-essential businesses that are public-facing to close. Under the order, “public facing” means businesses that require customer, vendor, or other in-person contact or are at sites that require more than ten workers to convene in a space where social distancing is not possible.

Essential businesses that remain open, with social distancing in effect, include all businesses identified in the CISA guidance. In addition, the Maine order expressly exempts fishing and aquaculture, industrial manufacturing (which is broader than critical manufacturing), steam power, construction and maintenance of essential infrastructure, forest products, essential home repair, auto repair, and hardware stores, among other businesses.

The order specifies that violations of its terms can be enforced by the police and would be a misdemeanor that could result in up to six months in prison and a fine. Police are empowered to arrest violators. The order also extended Governor Mills’ March 18 order restricting gatherings of more than 10 people and closure of restaurants and bars to on-site services. Both orders are in effect until April 8, 2020.

**Vermont**

Governor Philip Scott issued the “Stay Home, Stay Safe” order on March 24, 2020, which took effect on March 25 at 5pm. The order requires all businesses and nonprofits to close in-person operations unless they are excepted, and directs all individuals to remain at home except for essential purposes such as personal safety, securing food or medicine, medical care, exercise, and care of others.

Vermont has the narrowest list in New England of exceptions for businesses that can remain open. Unlike other states, Governor Scott did not broaden the restrictions on “critical manufacturing” to include other industries and did not say that suppliers to excepted retailers were automatically allowed to remain open; rather, each business must itself qualify under the order.

Vermont provided additional guidance on which businesses can remain open based on the NACIS codes of the products it produces. These businesses are limited to those either directly involved in, or directly supporting, critical infrastructure areas of health, public safety, utilities, telecommunications, transportation, fuel, building repairs necessary for safety and sanitation, trash collection and disposal, mail and shipping, news media, banks and related financial institutions, services to the disadvantaged, and national security. Those businesses that remain open are required to adhere strictly to the CDC guidance for social distancing, hygiene, requiring sick employees to stay home, and regular disinfection of frequently touched objects and surfaces.
Businesses that believe they are supporting critical infrastructure but are not included in the exempted NACIS codes or elsewhere in the order can request permission to continue to operate via a form, but Vermont has emphasized that the process is intended for clarification and they will not be granting exceptions outside of the Executive Order.

The order gives the police enforcement authority, but expressly emphasizes that the police should bring violators into compliance and discourages arrests. The order is in effect until April 15, 2020.

**New Hampshire:**

On March 27, 2020, New Hampshire was the last state in New England to issue a closure order with Emergency Order #17. All businesses not identified as providing “essential services” must close their physical workspaces to facilities, workers, customers, and the public, and cease all in-person operations.

Rather than identify sectors, New Hampshire issued a list of “essential services.” The essential services largely track the CISA sectors, but also specifically include workers in the seafood and fishing industries, commercial and residential landscaping services (including golf courses), company cafeterias, and blood donors. It also exempts businesses in the supply chains of other essential services. Governor Christopher Sununu’s order noted expressly that more businesses may be added to the list. Businesses that believe they are providing essential services not on the list can request designation as an essential business via email to essential@nheconomy.com, including a brief justification and contact information.

As with Vermont, those businesses that are designated essential must follow the social distancing protocols issued by the CDC and the New Hampshire Division of Public Health. In addition, the order requires individuals to remain at home except for specific reasons, such as exercise, essential errands such as getting food and fuel or doing laundry, visiting a family member or caring for another person, receiving deliveries, medical care, and work for an exempted business. The New Hampshire order also uniquely includes “outdoor recreation” as a permissible reason to leave the home.

Both the police and the Department of Public Health have the ability to enforce the order. The New Hampshire order has the longest sunset and is in effect until May 4, 2020.

**Massachusetts:**

Governor Charlie Baker issued the Order Assuring Continued Operation of Essential Services on March 23, 2020, ordering all businesses with “brick and mortar” premises to close unless they are designated as essential services. The order expressly encourages all non-essential businesses to continue to operate if they are able to do so through remote means. It also expressly exempts places of worship, provided they limit indoor gatherings to ten people.

Massachusetts urges all essential businesses to remain open, if they do so in
keeping with the social distancing protocols and guidance. In particular, the Massachusetts order notes that restaurants and bars can remain open as long as the food and beverages are for takeout or delivery only. Governor Baker’s designations, although largely in line with the CISA sectors, notably are broader to include all construction. The order also specifies that medicinal cannabis, but not recreational, is an essential service.

Baker’s order is also different from the other orders in that it describes its purpose as ensuring that essential businesses remain open, rather than to close non-essential businesses in the interest of public health. It appears that this drafting choice may have been deliberate to assist the governor’s office in justifying areas of openings that are broader than other orders and guidance.

Also unusual among the New England orders, is that the Massachusetts order expressly states that it “supersedes and makes inoperative any order or rule issued by a municipality that will or might in any way impede or interfere with the achievement of the objectives of this order,” which are to ensure that the designated businesses remain open.

Businesses not included can request designation as an essential business only if they are not covered by the existing guidance.

Enforcement authority resides with the Department of Public Health with, if necessary, “the assistance of State or municipal police.” The order is in effect until April 7, 2020.

**Rhode Island:**

Rhode Island initially issued the most limited order, focusing only on closing specific high-risk businesses. The order instructed all recreational, entertainment, and “close-contact” businesses (meaning businesses where social distancing is not possible) to close.

On March 28, Governor Gina Raimando supplemented and broadened the closure order with a “Stay at Home” order extending required closures to non-critical retail businesses. Critical retail is defined as retail in support of food, medicine, communications and shipping, equipment and hardware stores, funeral homes, and financial institutions including pawn shops and payday lenders. The order also included the sale of firearms. All other businesses are required to maintain CDC social distancing guidelines for hygiene, regular disinfecting, and requiring sick employees to remain home, and the posting of notices of those requirements.

Businesses that remain open must also require all personnel who can work from home to do so. Governor Raimondo also issued more specific guidelines for large retailers, including limiting capacity and marking social distancing spacing, and not permitting non-critical retail for stores that sell both critical and non-critical goods (although online orders and shipping may continue for all retail sales). The Department of Business Regulation is empowered to identify other businesses as critical.

The second order also requires residents to remain at home except traveling for
work, medical treatment, or to obtain necessities, as well as to exercise. All travelers coming into Rhode Island from another state for a non-work purpose are also required to self-quarantine for 14 days, a controversial part of the order.

The order can be enforced by the Rhode Island Department of Health and was originally in effect until March 30, 2020. On March 27, the order was extended to April 13.

**Connecticut:**

In his March 20, 2020 “Stay Safe, Stay Home” order, the first issued in New England, Governor Ned Lamont incorporated the CISA guidance by reference in defining essential businesses, but specified that essential businesses could be broader than those identified in the CISA guidance.

In addition to those sectors, the order specifically included “big-box” stores and wholesale clubs in their entirety (provided that they also sell groceries), hardware stores, and pet and pet supply stores. It also specified that liquor/package stores and manufacturer permittees could remain open. The broadest deviation from the CISA sectors is that the Connecticut order also exempts all manufacturing and corresponding supply chains, as well as all construction, both commercial and residential. Businesses that remain open are required to maintain CDC social distancing protocols. All other businesses were ordered to reduce workforces at any workplace locations by 100%. The order allows businesses to request designation as an essential business from the Department of Economic and Community Development, provided they are not covered by existing guidance.

The order was subsequently amended to allow non-essential retailers to sell on site, provided they only offer remote ordering and delivery or curbside pickup.

While Governor Lamont expressly did not supersede any local orders already in effect, he did order that “no municipal chief executive officer or designee may enact or enforce any order that conflicts with any provision of any of my Executive Orders or an order issued by an executive agency... or issue any shelter-in-place order or other order prohibiting travel” unless they first receive written permission from the Department of Emergency Services.

The order remains in effect through April 22, 2020.

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