

PERFORMANCE AUDIT REPORT

Pennsylvania Department of Community and Economic Development

COVID-19 Business Waiver Request Program

September 2021



Commonwealth of Pennsylvania
Department of the Auditor General

Timothy L. DeFoor • Auditor General

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TIMOTHY L. DEFOOR
AUDITOR GENERAL

September 1, 2021

The Honorable Tom Wolf
Governor
Commonwealth of Pennsylvania
Room 225 Main Capitol Building
Harrisburg, PA 17120

Dear Governor Wolf:

This report contains the results of the Department of the Auditor General's performance audit of the business waiver program implemented after all non-life-sustaining businesses were ordered to close to mitigate the spread of COVID-19. This program was administered by the Pennsylvania Department of Community and Economic Development (DCED). This audit was conducted under the authority of Sections 402 and 403 of The Fiscal Code, 72 P.S. §§ 402 and 403, and in accordance with applicable *Government Auditing Standards*, issued by the Comptroller General of the United States.¹ Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our performance audit covered the period March 6, 2020, the date of the Governor's COVID-19 disaster emergency declaration, through June 5, 2020, the date the last Pennsylvania counties were moved into the "yellow" reopening phase, unless otherwise noted, and included the following three objectives:

- Evaluate the criteria used to deem a business as life-sustaining versus non-life-sustaining and compare the criteria with national guidelines.

¹ U.S. Government Accountability Office. *Government Auditing Standards*. 2018 Revision.

- Evaluate the development of the waiver request program and DCED's process to review businesses' requests, including the development of the waiver application, the criteria utilized, the processing time, and the guidance provided to businesses.
- Evaluate and determine whether waivers were granted or denied consistently and in a timely manner.

Our methodology to satisfy these audit objectives, along with our evaluation of management's internal controls significant to these audit objectives, is included in *Appendix A* of this report.

In addition to the executive order regarding business closures issued on March 19, 2020, the Governor's Office also announced the ability for businesses to submit a request for a waiver from the closure orders. The extremely short timeframe for setting up the waiver program resulted in the need for revisions to the guidance issued by the Governor's Office along with the waiver program process as it was implemented.

We found that Pennsylvania's business closure order was more restrictive than federal guidelines, which resulted in more business closures. The focus of the federal guidance was different than the focus of the Governor's Office in developing the *Pennsylvania Industry Operation Guidance* (IOG). The federal guidance listed essential workers that were considered critical for not only protecting public health and safety, but also for economic and national security. Whereas, the IOG was developed to restrict non-life-sustaining businesses within Pennsylvania from remaining open. The IOG identified industry groups broken down based on their North American Industry Classification System code with a notation for each as to whether it was allowed to continue operations. We attempted to compare the federal and state guidance and found that industries did not align in a manner that facilitated a detailed comparison.

The guidance available to businesses and used by DCED to determine whether or not businesses are life-sustaining continued to evolve throughout the waiver program. The guidance included a total of 10 versions of the IOG and 15 versions of the *Life Sustaining Business Frequently Asked Questions* (FAQ) that provided additional information regarding the IOG and the waiver program. This frequently evolving guidance was one of many aspects of the waiver program that caused confusion among businesses throughout the commonwealth and added challenges to DCED staff reviewing the waiver applications, potentially resulting in inconsistent decisions.

The rushed creation and implementation of the program led to deficiencies related to the waiver application and review process that resulted in questionable decisions made for waiver requests, along with a lack of accountability and transparency. Specific direction was not provided to applicants as to what information they needed to include on their application, and the applicants were not required to attest to the accuracy of the information submitted on their waiver application for 80 percent of those submitted. DCED also did not require employees who reviewed the applications to document their justification regarding granting or denying waivers.

Additionally, DCED did not design the databases used for this program to capture the identity of all individuals reviewing applications or all dates reviewed. Additionally, certain communications sent to businesses regarding waiver decisions were not retained and DCED did not establish a timeframe for processing waiver request applications.

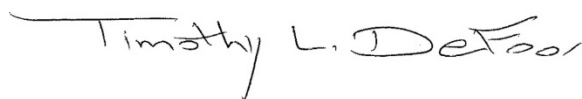
These deficiencies resulted in questionable and inconsistent decisions made for waiver applications as we found in our review of 150 waiver applications. Specifically, while we found that final responses issued to 103 of the 150 businesses appeared reasonable, responses issued to 45 businesses appeared questionable, and the two remaining businesses were not issued a response to their waiver applications. We found that notification letters sent to businesses contained unclear language regarding application decisions and could have led to confusion for businesses as to what, if any, business operations they could continue to perform. We also reviewed correspondence sent to the Governor's Office and/or DCED from legislators and lobbyists and found no appearance of undue influence related to responses issued to businesses, although it is possible that applications may have been evaluated and received a response, or a corrected response, quicker than through the regular application review process.

We further found that responses to businesses were inconsistent among businesses within the same type of industries selected for analysis. We found waiver applications processed early in the waiver program were reviewed and decided differently than those processed later in the waiver program. We also found that inclusion of key words in the application often resulted in favorable, but questionable, responses. There was also an appearance of inconsistency within an industry due to how businesses stated they would deliver its product to customers, and DCED gave inconsistent responses to businesses regarding retail sales versus repair of appliances.

Overall, we offer 22 recommendations for DCED, in conjunction with the Governor's Office, to consider implementing to help improve the business waiver program (or similar program) in the event that a program is ever utilized again. DCED management stated that although they might disagree with some aspects of the findings, they found all of the recommendations to be very constructive and want to learn from prior experience in the event that a similar program ever becomes necessary again. Regarding the areas that management did not agree, see further clarifications in our *Auditor's Conclusion* to this report.

In closing, we would like to thank DCED for its cooperation and assistance during the audit. We reserve the right to follow up at an appropriate time to determine whether and to what extent all recommendations have been implemented.

Sincerely,

A handwritten signature in black ink that reads "Timothy L. DeFoor". The signature is written in a cursive, flowing style.

Timothy L. DeFoor
Auditor General

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Pennsylvania Department of Community and Economic Development COVID-19 Business Waiver Request Program

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Executive Summary

This report presents the results of our performance audit of the Pennsylvania Department of Community and Economic Development (DCED) regarding the COVID-19 business waiver request program (waiver program). Our performance audit was conducted under the authority of Sections 402 and 403 of The Fiscal Code.² We conducted this audit, in part, due to questions and concerns from legislators, businesses, media and the general public regarding the criteria developed to identify which businesses were deemed life-sustaining and allowed to remain open and continue with at least a portion of their operations, and which businesses were deemed non-life-sustaining and therefore required to cease operations.

Our performance audit had three objectives and covered the period March 6, 2020, the date of the Governor’s COVID-19 disaster emergency declaration, through June 5, 2020, the date the last Pennsylvania counties transitioned into the “yellow” reopening phase, unless otherwise noted. Refer to *Appendix A* of this report for a detailed description of the audit objectives, scope, methodology, our evaluation of management’s internal controls significant to the audit objectives, and data reliability.

DCED helps with business development, community projects or site revitalization within the commonwealth by offering a variety of programs to help fund those initiatives.³ As an agency that links state government and private businesses, the Governor’s Office tasked DCED with implementing the waiver program for those businesses seeking exemption from the Governor’s business closure orders.

Our audit results are contained in five findings, summarized below, and include 22 recommendations directed to DCED, in conjunction with the Governor’s Office. DCED management stated that although they might disagree with some aspects of the findings, they found all of the recommendations to be very constructive and want to learn from prior experience in the event that a similar program ever becomes necessary again.

Finding 1 – Pennsylvania’s business closure order was more restrictive than federal guidelines, which resulted in more business closings.

The focus of the United States Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA) guidance was different than the focus of the Governor’s Office’s *Pennsylvania Industry Operation Guidance* (IOG). The federal guidance listed essential workers that were considered critical for not only protecting public health and safety, but also for

² 72 P.S. §§ 402 and 403.

³ <https://dced.pa.gov/programs-funding/> (accessed May 25, 2021).

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supporting economic and national security. Whereas, the IOG was developed to identify which industry groups in Pennsylvania were considered life-sustaining and which were non-life-sustaining, thereby restricting non-life-sustaining businesses within Pennsylvania from remaining open.

We found that the IOG was more complex compared to CISA guidance. The CISA guidance included 14 sectors and listing bullets of essential critical infrastructure workers within each sector. In contrast, the first IOG dated March 19, 2020, listed 10 industries, 19 sectors, 105 subsectors, followed by 306 industry groups based on categories set forth by the North American Industry Classification System with notations for each industry group as to whether it was allowed to continue operations or not. The IOG also included notes of exceptions for certain businesses within the respective industry group classifications.

The Governor's Office explained that its goal was to put public health and safety first. As a result, the Governor's Office decided to use its own criteria to determine whether businesses were considered life-sustaining instead of using the guidance issued by CISA, ultimately limiting the number of businesses allowed to operate. We attempted to compare the federal and state guidance but found that industries did not align in a manner that facilitated a detailed comparison. Because we could not reasonably quantify the effect of the Governor's Office use of narrower guidance as compared to the CISA guidance, we included some examples in our finding of the effects on certain Pennsylvania business types, including food trucks, automobile sales, manufacturing, healthcare and sales of food and beverage products.

We offer four recommendations to DCED, in conjunction with the Governor's Office, if the waiver program (or similar program) is ever utilized again.

Finding 2 – The guidance available to businesses and used by DCED to determine whether or not businesses are life-sustaining continued to evolve throughout the waiver program.

We found that guidance provided to assist with the implementation of the waiver program continuously evolved, adding further complexity when interpreting whether a business was permitted to operate. Specifically, during the period from March 19, 2020 through May 28, 2020, the Governor's Office issued ten versions of the IOG, four of which occurred through April 3, 2020, the time period through which the businesses needed to use them to determine if a waiver request was necessary. Changes to the IOG included notes applicable to various industry groups. The notes listed exceptions to the decisions made regarding whether the respective industry group was deemed a life-sustaining business or not a life-sustaining business.

In addition to the IOG, on March 24, 2020, DCED developed and posted on its website a *Life Sustaining Business Frequently Asked Questions* (FAQ) regarding the IOG and the business

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waiver program. DCED issued a total of 15 versions of the FAQ, four of which occurred during the time that businesses were utilizing them as guidance during the waiver program.

The continually evolving guidance meant that businesses had to ensure that they were using the most current versions of the guidance when determining if their businesses were deemed life-sustaining. Additionally, this created challenges to commonwealth employees who processed the waiver applications and needed to understand the specific guidance that was relevant on the day the waiver applications were being reviewed in order to properly determine whether waivers should be granted and then respond to the businesses accordingly.

We offer three recommendations for DCED, in conjunction with the Governor's Office, regarding guidance used when determining if businesses were deemed life-sustaining, to consider if the waiver program (or similar program) is ever used again.

Finding 3 – Deficiencies related to the development of the waiver program resulted in a lack of accountability and transparency.

Building the waiver program from scratch meant that DCED had to develop mechanisms (1) for businesses to provide necessary information to request a waiver (the online application); (2) tracking the information businesses provided (the database); (3) documenting the process for reviewing applications and the decisions made (the database); and (4) communicating the decisions to the businesses (emails), all in an extremely short period of time. Based on our audit procedures, we found deficiencies related to the waiver application document and information recorded and retained in the two databases used during the waiver program. Additionally, DCED failed to retain certain communications that were sent to businesses regarding waiver decisions and failed to establish a timeframe for processing the applications.

During the waiver application program time period of March 20, 2020 through April 3, 2020, DCED posted five different versions of the waiver application online for businesses to use and received a total of 42,380 waiver applications. We found the application questions to be general in nature and did not provide specific direction to businesses on what information to submit. For example, consideration for granting a waiver was sometimes dependent on the method a business planned to use in providing its product to its customers or how the business answered the question regarding whether or not they met the definition of life-sustaining. We noted that businesses were not required to attest to the accuracy of the information submitted on their waiver applications until two days before DCED stopped accepting waiver applications, and therefore 80 percent of the total applications submitted had no attestation of the accuracy of the information submitted. As a result, there was a risk that businesses desperate to continue to operate during the pandemic may have added inaccurate or exaggerated language to their applications in an attempt to obtain a waiver.

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We further found that individuals initially or subsequently reviewing applications were not required to document the justification for their decisions in the databases utilized, and the identity of the reviewer(s) was not always recorded or the reviewers' identities and dates reviewed were overwritten. Finally, we found DCED did not retain all of the responses sent to businesses for recordkeeping purposes nor establish a timeframe for processing the applications, increasing the risk that DCED may not have made critical decisions and responded timely to businesses.

We offer seven recommendations to DCED, in conjunction with the Governor's Office, relating to improving the mechanisms used to implement the waiver program if it (or a similar program) is ever needed again.

Finding 4 – Questionable decisions by DCED for certain waiver requests potentially resulted in detrimental effects for businesses and an unnecessarily increased risk to public health.

Based on our review of 150 of the total 42,380 waiver applications submitted to DCED, we found the final responses issued to 103 businesses appeared reasonable, while 45 final responses appeared questionable and responses to two businesses were not issued. We also found unclear language included in the waiver decision responses (Yes, No, or Not Required) emailed to businesses by DCED that could have led to confusion for businesses as to what, if any, business operations they could continue to perform.

We further reviewed correspondence from legislators and lobbyists to DCED or the Governor's Office sent on the behalf of Commonwealth businesses affected by the business closure orders. The correspondence included 159 emails representing approximately 153 businesses and 7 text messages regarding 4 businesses provided to us by DCED management. Based on our review of this correspondence for 77 of the 157 businesses in which correspondence was dated prior to DCED issuing a response, the final responses issued to businesses appeared reasonable. While we found that the correspondence did not appear to have undue influence related to responses issued to businesses, it is possible that applications may have been evaluated and received a response, or corrected response, quicker than through the regular application review process.

We offer six recommendations to DCED, in conjunction with the Governor's Office, related to the concerns noted in this finding if the waiver program (or similar program) is ever utilized again.

Finding 5 – Responses to businesses were inconsistent among businesses within the same industry.

In order to determine if initial responses issued by DCED were consistent among businesses within the same industry, we selected nine industries generally considered non-life-sustaining

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and, therefore, not permitted to continue physical operations. These industries included appliance sales/service, gyms, beauty salons, massage, notary, pet services, real estate, construction and greenhouse/florist-related businesses. A total of 80 of the 150 applications that we selected for review were within one of these industries. Of the 80 applications reviewed, we found only 15 appeared consistent with responses issued to businesses within the same industry while 54 did not appear consistent. Additionally, seven applications were not analyzed due to the businesses requesting operations that were not typical for a business within that industry, such as a salon requesting to sell hand sanitizer only. Four businesses were not issued a response.

We found that the inconsistencies noted were a result of applications processed early in the waiver program being reviewed differently than those processed later in the waiver program, and the inclusion of key words in the application often resulted in favorable, but questionable, responses. We also noted appearances of inconsistency within an industry due to how businesses stated they would deliver their product to customers, and DCED provided inconsistent responses to businesses regarding retail sales versus repair of appliances.

Although many of the businesses received subsequent responses to help correct the industry inconsistencies, in light of these inconsistencies, we offer two recommendations to DCED, in conjunction with the Governor's Office, if the need for the waiver program (or a similar program) arises in the future.

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Introduction and Background

This report presents the results of our performance audit of the Pennsylvania Department of Community and Economic Development (DCED) regarding the COVID-19 business waiver request program (waiver program), which was implemented as the result of the COVID-19 public health emergency business closure orders.

This performance audit was conducted under the authority of Sections 402 and 403 of The Fiscal Code and in accordance with applicable *Government Auditing Standards*, issued by the Comptroller General of the United States, 2018 Revision.⁴ Our performance audit had three objectives:

- Evaluate the criteria used to deem a business as life-sustaining versus non-life-sustaining and compare the criteria with national guidelines.
- Evaluate the development of the waiver request program and DCED’s process to review businesses’ requests, including the development of the waiver application, the criteria utilized, the processing time, and the guidance provided to businesses.
- Evaluate and determine whether waivers were granted or denied consistently and in a timely manner.⁵

The audit period was from March 6, 2020, the date of the Governor’s COVID-19 disaster emergency declaration, through June 5, 2020, the date the last Pennsylvania counties were moved into the “yellow” reopening phase, unless otherwise noted.⁶ Refer to *Appendix A* of this report for a detailed description of the audit objectives, scope, methodology, and data reliability.

⁴ 72 P.S. §§ 402 and 403.

⁵ The term “consistently” refers to routine uniformity.

⁶ The Governor’s Office released guidance on the phased re-opening of businesses by region or county. As defined by the Governor’s Office, the red phase had the sole purpose of minimizing the spread of COVID-19 through strict social distancing, non-life-sustaining business closures, school closures, and building safety protocols. The yellow phase meant some restrictions on work and social interaction would ease while others, such as closures of schools, gyms, and other indoor recreation centers, hair and nail salons, as well as limitations around large gatherings remain in place. The green phase eased most restrictions with the continued suspension of the stay at home and business closure orders to allow the economy to strategically reopen while continuing to prioritize public health. <https://www.governor.pa.gov/process-to-reopen-pennsylvania/> (accessed June 4, 2021).

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In the sections that follow, we present the following general background information related to DCED and the waiver program:

- DCED's Mission
- Business waiver request program
- Application process
- Application review
- Responses issued to businesses
- Quality control review
- Databases utilized during the waiver program
- Call center

DCED's Mission

DCED was created by the Community and Economic Development Enhancement Act in 1996 with the merging of the Department of Commerce and the Department of Community Affairs.⁷ DCED helps with business development, community projects, or site revitalization within Pennsylvania by offering a variety of programs to help fund those initiatives.⁸

DCED's mission is as follows:

To encourage the shared prosperity of all Pennsylvanians by supporting good stewardship and sustainable development initiatives across our commonwealth. With a keen eye toward diversity and inclusiveness, we act as advisors and advocates, providing strategic technical assistance, training, and financial resources to help our communities and industries flourish.⁹

As an agency that bridges the relationship between state government and private businesses, the Governor's Office tasked DCED with implementing the waiver program for those businesses seeking exemption from the business closure orders.

⁷ See 71 P.S. § 1709.101 *et seq.* (Act 58 of 1996 as amended). According to the records of the Pennsylvania State Archives, the Department of Commerce "was created in 1939 to promote the development of business, industry and commerce in the state." Further, the Department of Community Affairs "was created in 1966 to assist local governments and to enable the state to provide important services necessitated by expanding intergovernmental relationships involving all levels of public jurisdiction." See Pennsylvania Historical and Museum Commission link: <https://www.phmc.pa.gov/Archives/Research-Online/Pages/Environmental-Resources-Records-RG-14-34.aspx#> (accessed June 24, 2021).

⁸ <https://dced.pa.gov/programs-funding/> (accessed May 25, 2021).

⁹ <https://dced.pa.gov/about-us/> (accessed February 4, 2021).

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Business Waiver Request Program

On March 6, 2020, the Pennsylvania Secretary of Health issued a bulletin entitled “First Presumptive Positive COVID-19 Cases in Pennsylvania.” The Governor of Pennsylvania then proclaimed a disaster emergency and subsequently, on March 19, 2020, issued an executive order that: (1) prohibited the operation of all businesses in Pennsylvania that are not life-sustaining; and (2) prohibited the operation of dine-in facilities including restaurants and bars. The order became effective immediately and was to remain in effect until further notice.¹⁰ The order stipulated that life-sustaining businesses could remain open but were required to follow, at a minimum, social distancing practices and other mitigation measures as defined by the National Centers for Disease Control and Prevention (CDC) to protect workers and patrons. On the same day, the Pennsylvania Secretary of Health issued an order regarding life-sustaining businesses which stated, in part:

To protect the public from the spread of the Coronavirus (COVID-19), it is necessary that no person or entity shall operate a place of business that is not a life sustaining business regardless of whether the business is open to members of the public.¹¹

Included with the Governor’s executive order was the *Pennsylvania Industry Operation Guidance* (IOG) (see *Appendix C*) that provided information for businesses, organized by industry group, and guidance as to whether each industry group could continue with physical operations. The list did not include the names of specific businesses but instead included four levels: industry, sector, subsector, industry group, and the designation of whether or not each could continue with physical operations. In later versions of the IOG, the North American Industry Classification System (NAICS) codes were added as a point of reference for businesses attempting to determine if they were permitted to remain open.¹²

Given the circumstances surrounding the rushed development and implementation of the waiver process, along with evolving guidance, DCED encountered many challenges along the way as further discussed in *Findings 3, 4, and 5*.

¹⁰ <https://www.scribd.com/document/452416027/20200319-TWW-COVID-19-Business-Closure-Order> (accessed May 14, 2020).

¹¹ <https://www.scribd.com/document/452409377/03-19-20-Soh-Covid-Order> (accessed May 14, 2020).

¹² NAICS code is a classification within the North American Industry Classification System. It was developed for use by Federal Statistical Agencies for the collection, analysis, and publication of statistical data related to the US Economy. NAICS is a self-assigned system, no one assigns you a NAICS code. This means that a company/business selects the code that best depicts their primary business activity and then uses it when asked for their code. <https://www.naics.com/what-is-a-naics-code-why-do-i-need-one/> (accessed February 4, 2021).

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Application Process

For businesses that were identified on the IOG as non-life-sustaining, but who believed that they could help mitigate the crisis by providing a life-sustaining service, the Governor announced that they could seek an exemption from the closure orders. The program accepted waiver request applications online from March 20, 2020 through April 3, 2020.¹³ DCED management stated that during that time period, it received 42,380 waiver applications.

According to DCED management, on March 19, 2020, immediately following the Governor's announcement regarding the opportunity to apply for exemption from the business closure orders, DCED set up a dedicated email address in an attempt to provide a way for businesses to connect with DCED regarding their interest in submitting a request. DCED management stated that they expected the email account to receive a total of a few hundred to a few thousand requests. In the first 24 hours, however, DCED management stated that the account received nearly 2,000 email requests. Governor's Office management stated that in order to accommodate the number of exemption requests, they decided to develop a waiver application.

According to Governor's Office management, staff from its office and DCED jointly created the questions to be included on the waiver application.¹⁴ DCED management stated that the application questions were designed to elicit information regarding how a business' goods and/or services were life-sustaining and its ability to safely provide them to the public. The online application was then developed and placed online by a third party vendor who was also responsible for forwarding submitted applications to DCED.¹⁵ See *Finding 3* for identified deficiencies with the waiver application document and *Appendix E* for the five versions of the waiver application utilized during the waiver program.

DCED management stated that once the waiver application was available, those that had sent an email regarding interest in a waiver request were sent a reply that included links to: (1) the IOG; (2) the *Life Sustaining Business Frequently Asked Questions* (FAQ) developed by the Governor's Office; and (3) the waiver application. DCED also provided an email address to send any further questions not answered on the FAQ. The email encouraged businesses to view the IOG and FAQ to determine if it was necessary to apply for a waiver. The email indicated that after the business submitted an application, business professionals at DCED would review the form and provide a

¹³ In addition to on-line requests, DCED also accepted application information over the telephone from businesses that were unable to access the internet.

¹⁴ DCED management stated that the Governor's Office gave the final approval of the questions and also provided the guidance that DCED management and staff utilized to evaluate and make decisions regarding businesses' waiver request applications. Neither the Governor's Office nor DCED could provide written documentation of the discussions or how it was decided which questions to include on the application.

¹⁵ The online application was developed and managed by a third-party vendor who is an eGov Services Partner of PA.gov and, according to DCED management, manages most of Pennsylvania's state government websites.

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response as quickly as possible. Additionally, the reply specified that non-life-sustaining businesses, as identified on the IOG, were not permitted to continue operating their physical locations while waiting for a response.

The first version of the waiver application requested the following information:

- Business name, address, and county.
- Applicant's name and contact information.
- Business description and number of employees.
- Justification as to how the business meets the definition of life-sustaining.
- How the business planned to meet the CDC's recommended guidelines to maintain employee safety during the pandemic.
- How many employees would be in the company's office or physical location.

According to DCED management, upon submission of an application, a unique submission identification (ID) number was assigned to the application and a confirmation email was generated that included the submission ID number and an acknowledgement that the application was received, would be reviewed, and that a response would be provided by DCED. Additionally, the applicant received notification as to the email address from which they should expect a response.

Application Review

DCED management stated that, with only a few hours' notice, DCED staff assembled an initial review team consisting of professionals with multiple levels of experience ranging from executive level office staff to administrative assistants (reviewers). The review team consisted primarily of DCED staff and one Department of Environmental Protection employee with as many as 63 reviewers processing applications on one day at its peak. DCED management stated that the review team worked seven days a week to review the waiver applications using new database systems while navigating serious challenges resulting from the COVID-19 pandemic. Additionally, representatives from the Governor's Office and Office of General Counsel (including attorneys assigned to DCED and the Governor's Office) also provided assistance to reviewers for the more difficult waiver requests.

DCED management stated that the reviewers were not provided with formalized training. Instead, they were provided with the IOG and FAQ from the Governor's Office, federal guidance from the United States Department of Homeland Security's Cybersecurity and Infrastructure

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Security Agency (CISA), and documents developed by DCED management including the *Criteria for Reviewing Waiver Requests, and Tips and Guidance*.¹⁶

The *Criteria for Reviewing Waiver Requests*, included in *Appendix G*, advised reviewers on the process of reviewing applications and making a determination on the waiver request, as well as informed the reviewers that assistance with questions would be available from the Governor's Office and other state agencies, as needed. Additionally, management stated that from March 20, 2020 through April 3, 2020, there were daily online conversations, Skype calls, and regular conference calls to allow the review team members to compare notes and experiences in dealing with common types of requests. DCED management stated that staff from the Governor's Office was also available to provide feedback and answer questions. Management further stated that these daily discussions were also necessary to help them understand the changing guidance, which, as discussed in detail in *Finding 2*, was updated frequently throughout the process.

Documents provided to reviewers instructed them to first determine the business' primary activity from a review of the business description, justification, and other information submitted within the waiver application and, if necessary, research the business online. Once the type of business was determined, the reviewer was to establish where the business fell on the IOG. If unsure in what industry group a business fell, reviewers were provided with websites they could view to get more detailed information about the types of business activities contained in each of the industry groups on the IOG.

Responses Issued to Businesses

If the business fell within one of the industry groups that was life-sustaining and contributed to the health and safety of Pennsylvania residents, and was therefore permitted to operate according to the IOG, reviewers were instructed to note Not Required (NR) in the database (discussed in detail in a later section). The business would then be notified that certain operations described in their waiver application appear to be within a life-sustaining business sector and they did not require an exemption to remain open for those business operations.¹⁷

Based on a review of the business description and justification for how the business meets the definition of life-sustaining, if the business did not fall within one of the industry groups allowed by the IOG to continue with operations, but otherwise performed life-sustaining work or played a

¹⁶ The United States Department of Homeland Security identifies and evaluates critical infrastructure sectors on a regular basis as part of its everyday mission to increase the resiliency of the United States from all threats. On March 19, 2020, CISA issued a Memorandum on Identification of Essential Critical Infrastructure Workers during COVID-19 Response. DCED provided us with the last version of the *Tips and Guidance* dated April 2, 2020, and stated that this was a live document available to the reviewers and was not versioned.

¹⁷ DCED provided us with a data file of information for the 42,380 applications from the systems database.

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critical role in the manufacture and supply of goods and services necessary to sustain life, the reviewer could note **YES** in the database, granting the business a waiver. The business would then be notified that the business operations described in its waiver application could continue to operate at the physical location identified in the application.

If the business did not fall under a general exemption as provided on the IOG and did not otherwise justify life-sustaining work, then the reviewer was to deny the application request by entering **NO** in the database. The business would then be notified that the business operations must remain closed.

The following table shows the breakdown of responses issued for the 42,380 applications received as reported in the data file provided by DCED:

Response	Total Number of Applications	Percent of Total Applications
YES	7,492 ^{a/}	18%
NO	17,077 ^{b/}	40%
NR	14,168 ^{c/}	33%
No response listed/Blank fields	3,524 ^{d/}	9%
Not applicable - Blank application	119	0%
Total	42,380	100%

^{a/} - The notification date fields were blank for 14 applications; therefore, the business may not have actually been issued a YES response notification. One of the 14 was a second application submitted for the business after March 31, 2020, which was the date that the waiver application first included the note that duplicate applications would not be reviewed.

^{b/} - Five were test applications created by DCED. The notification date fields were blank for an additional 17 applications; therefore, the business may not have actually been issued a NO response notification. Ten of the 17 applications, however, were not applications requesting a waiver, but rather complaints submitted by individuals regarding businesses that they did not think should be operating. One of the remaining seven was a second application submitted for the business after March 31, 2020, which was the date that the waiver application first included the note that duplicate applications would not be reviewed.

^{c/} - One was not an application to request a waiver but rather a complaint filed regarding a business that they did not think should be operating. The notification date fields were blank for an additional 5; therefore, the business may not have actually been issued a NR response notification.

^{d/} - 3,521 received an industry-type notification letter (described in a later section) rather than a YES, NO, or NR response. One was not an application requesting a waiver, but rather a complaint submitted by an individual regarding a business that they did not think should be operating. Two do not have information indicating that they were issued either a response or a notification letter.

Source: This table was compiled by the staff of the Department of the Auditor General from data received from the Department of Community and Economic Development. We determined that the reliability of this data is sufficiently reliable in regards to completeness and accuracy of the application information submitted by businesses, but with significant limitations as to the reliability of data regarding the review process, including results of the review process, comments, and responses and/or

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notification letters issued to businesses. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings and conclusions as noted in Appendix A.

Considering that DCED reviewers determined that 14,168, or approximately one-third, of the 42,380 total applications submitted were not even required for the business to remain in operation, it is likely that businesses were confused by the guidance.¹⁸ These businesses provided goods or services that reviewers determined were already identified by the Governor's Office as life-sustaining, yet the businesses felt the need to apply for a waiver. We further discuss the difficulties, frustration, and confusion experienced by businesses throughout the findings included in our report.

When applicable, DCED issued industry notification letters outlining allowable operation guidelines as follows:

- **Residential construction letters** issued beginning March 31, 2020, clarified that only emergency repairs, site stabilization, weatherization, and work on projects that had been issued an occupancy permit could continue.
- **Automobile sales letters** issued beginning April 1, 2020, clarified that automobile repairs could continue; however, sales were prohibited unless title work was completed.
- **Golf course letters** were sent beginning April 1, 2020, noting that operations could remain open for grounds maintenance only.
- **Kitchen cabinet business letters** were issued beginning April 2, 2020, instructing them that their business operations must remain closed.
- **Construction letters** were issued beginning April 22, 2020, to communicate the guidelines regarding the reopening of construction on May 1, 2020.
- **Legal services letters** issued beginning April 29, 2020, clarified what activities could be conducted in-person, while following all safety measures.¹⁹

Finally, if the reviewer was uncertain about an application, they could indicate in the database the request for further review of the application.²⁰

¹⁸ We did not perform audit procedures for all 14,168 applications and, therefore, we cannot comment as to whether a waiver appeared to be required or not for each of those applications as determined by DCED; however, see *Finding 4* for results of 150 applications we did review, of which we found DCED determined a waiver was not required for 39.

¹⁹ Industry notification letter dates were obtained from the data file provided by DCED that included the available documentation of the review work performed to process the 42,380 waiver applications.

²⁰ Depending on the nature of the business, the further review of the application requested by the reviewer could have been performed by: (1) DCED management; (2) the Governor's Office; (3) legal counsel assigned to either DCED or the Governor's Office; or (4) another state agency such as the Department of Health or Department of Agriculture.

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In addition to considering whether the business was life-sustaining, or supported a life-sustaining business, reviewers were also directed to evaluate whether granting the waiver met the Governor's and Secretary of Health's intent to support health and safety of residents during the COVID-19 public health emergency. If there was any doubt that a waiver should be granted, they were directed to not grant the waiver.

Quality Control Review

DCED management stated that prior to March 24, 2020, each application was processed by one reviewer and a business was issued a response of either **YES**, **NO** or **NR** or was sent an industry (e.g., construction, golf course, legal services, automobile) notification letter outlining allowable operation guidelines. Further, DCED management stated that on March 24, 2020, DCED formed a Quality Control team (QC) and reviewed, at a minimum, 20 percent of all recommendations from reviewers. Beginning on March 27, 2020, QC increased the number of records reviewed up to 100 percent on some days. Questions that could not be resolved by QC were either: (1) posted as a question on a Microsoft Teams site if the question was general in nature and the answer might provide guidance for other applications; or (2) flagged "For Further Review" if the question required higher-level review or legal analysis.²¹ These were often discussed on phone calls with legal counsel to make final determinations. The QC review, in many cases as further described in detail in *Findings 4 and 5*, led to a change in the initial response issued to the business.²²

The waiver program offered no appeal process for an applicant that did not agree with the response they received. An applicant, however, was able to submit multiple applications.²³ The waiver program application period closed on April 3, 2020, but waiver application decisions continued to be made and responses emailed to businesses, including amended/corrected responses through the end of May.

²¹ Teams is a product of Microsoft that allows users to group chat, video call, share files, and co-author files in real time, and allows for the storage of files. <https://www.microsoft.com/en-us/microsoft-teams/group-chat-software> (accessed May 10, 2021).

²² Changes to responses included: (1) YES to NO, (2) NO to YES, (3) NR to NO, (4) NO to NR, (5) YES to NR, and (6) NR to YES.

²³ On the third version of the application, issued March 27, 2020, language was added requesting that duplicate applications not be submitted. On the fourth version of the application, issued March 31, 2020, language was added that duplicate submissions would not be reviewed; however, there was no feature in the database to reject duplicate applications.

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Databases Utilized During the Waiver Program

The first database system used during the waiver review process was an online Excel spreadsheet.²⁴ It contained the information provided by the applicants when completing the waiver application and fields that reviewers could use to indicate their decision on the application and/or to indicate whether an industry letter should be sent to the applicant (e.g., a construction notification that outlined allowable operations).

At the start of the waiver review process, DCED received submitted applications from its third-party vendor approximately six times per day. The Office of Administration, Office of Information Technology (OA-OIT) then loaded the applications into the database. According to DCED management, the applications were placed into batches of 50, which were then moved to a “To Be Reviewed” folder. Under this process, the waiver review team was able to access a batch of applications and then review them in the database in the order that they were received. Once a decision was made on an application, the application was moved to a folder for OA-OIT staff to access and generate the appropriate email (YES, NO, NR, and/or an industry type notification letter).

Due to the high volume of applications received within the first few days of the waiver program, which according to DCED management included 1,915 applications submitted on the first day and an additional 8,585 over the next two days, a new database was customized by OA-OIT to better meet the needs of DCED and the review team. DCED began using the second database on March 26, 2020, to process waiver applications. According to DCED, all of the data from the first database was loaded into the second database. Applications from the third-party vendor were provided to OA-OIT staff who loaded them into the second database. The second database did not require staff to place the applications into batches for the review staff as required in the first database, but rather reviewers were able to open any application, review, make a decision and close the application. When a decision was entered into the database, the application was closed and forwarded to QC for review. Once reviewed by QC, a response was generated by OA-OIT and emailed to the applicant.

The transition to the second database on March 26, 2020, included improvements beyond efficient accommodation of the volume of applications being received daily. In the second database, certain fields were protected as “read only” and, therefore, the review team was unable to edit those fields. This was not the case in the first database. Additionally, in the second database, a field was added to enable comments to be added and certain fields were

²⁴ Office of Administration, Office of Information Technology developed the database to use to document the waiver program review work.

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automatically populated, such as the email address of the individual processing the application and keyword identifying the business industry.²⁵

Call Center

In addition to the IOG and the FAQ published for purposes of determining whether a business could remain open, or if they may qualify for a waiver to the business closure order, DCED's call center phone number was listed as a resource on the DCED website for businesses to call with questions regarding the waiver program. DCED management stated that its call center received 36,392 calls and emails from businesses with questions regarding the business waiver program, which may indicate that businesses were confused or had concerns with the waiver program.²⁶

While the waiver program was in place, according to DCED management, the DCED call center staff was increased from the standard five members to a total of 95 staff members at the height of the program. The 90 extra call center staff came from other offices in DCED, the Governor's Office, and approximately nine other state agencies. According to DCED management and call center staff schedules provided to us, during the height of the program, the call center was staffed with between 30 and 40 staff members at a time, seven days a week, from 8:30 a.m. to 5:00 p.m.

After a few days, DCED management developed a call center script that was updated due to evolving guidance resulting in a total of four versions of the script.²⁷ Call center staff would direct callers to the FAQ and the IOG to help them determine if their business was already considered life-sustaining or if the businesses may be eligible for a waiver to the closure orders. DCED management stated that call center staff could also reach out to DCED management if they had questions.

²⁵ Due to the overwhelming amount of waiver applications received and the time sensitive nature of the program, DCED developed a priority system for reviewing the applications. The priority system was based on key words as identified by DCED and the Governor's Office for life-sustaining industries related to medical, food and agriculture, emergency services, defense, water, essential communication, chemical manufacturing, essential transportation, and energy and nuclear facilities. If an application contained one or more of the key words, it was assigned a higher priority code and reviewed before applications that did not contain any of the key words.

²⁶ We were unable to determine the effectiveness of the call center, as DCED management stated that they did not have the ability to track the number of calls on hold or the number of call backs needed. DCED management also relied on staff members to self-report the number of calls taken and returned. Additionally, the reasons for calls were not documented. We therefore could not confirm the actual number of calls, whether calls were returned, or whether responses provided to businesses that contacted the call center resolved their confusion and/or concerns related to the waiver program.

²⁷ In addition to the four versions of the script, one email was sent to call center staff that provided specific updates to the previously issued script.

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DCED also emailed applicants an Informational Bulletin on May 13, 2020, to explain the process undertaken to evaluate and respond to requests, share information on the red-yellow-green phases in the business reopening plan, and direct businesses to the website for additional information.

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Finding 1 – Pennsylvania’s business closure order was more restrictive than federal guidelines which resulted in more business closings.

As described in the *Introduction and Background*, the Governor’s response to the COVID-19 public health emergency included the closure of all non-life-sustaining businesses within the Commonwealth of Pennsylvania. The Governor’s initial COVID-19 business closure order, issued on March 19, 2020, included the *Pennsylvania Industry Operation Guidance* (IOG), a list of approved life-sustaining industries intended to aid businesses in determining whether or not they were allowed to remain open.²⁸ According to an analysis performed by the MultiState Associates, as of April 13, 2020, Pennsylvania was one of thirteen states that issued their own guidance in defining which industries were deemed to be life-sustaining.²⁹

This audit was initiated, in part, due to questions and concerns from legislators, businesses, media, and the general public regarding the criteria developed to identify which businesses were deemed life-sustaining and allowed to remain open and continue with at least a portion of their operations, and which businesses were deemed non-life-sustaining and therefore required to cease operations.

Our audit procedures included: (1) interviewing and corresponding with management from both the Governor’s Office and the Pennsylvania Department of Community and Economic Development (DCED); (2) reviewing documents developed by the United States Department of Homeland Security’s (DHS) Cybersecurity and Infrastructure Security Agency (CISA), the Governor’s Office, and DCED that either listed or provided guidance for determining which businesses were deemed to be life-sustaining; (3) evaluating the criteria used in Pennsylvania to deem a business as life-sustaining versus non-life-sustaining; and (4) comparing the criteria used in Pennsylvania with federal guidelines. The results of our evaluation and comparison are described in the following sections:

- Development and comparison of Pennsylvania’s initial guidance to federal guidance for determining what businesses were deemed to be life-sustaining.
- Effects of Pennsylvania’s use of more narrow guidance as compared to federal guidance.

²⁸ <https://www.scribd.com/document/452416027/20200319-TWW-COVID-19-Business-Closure-Order> (accessed May 4, 2020). The order was effective immediately with enforcement actions effective, as amended, on March 23, 2020, at 8:00 a.m.

²⁹ MultiState Associates tracked states that issued Stay-at-Home orders and what businesses were defined as essential in these states during the COVID-19 pandemic, https://docs.google.com/document/d/e/2PACX-1vSXZCFCbIRiRDRC-SWyc36T0S0hjXxT9wZAGM4V01_xtbywLBE0o_kgmfs0dMJ4VbpPh30j2ZFZ3TH/pub (accessed June 26, 2020). See *Appendix F* for the breakdown, as reported by the MultiState Associates, of guidance used in each of the 50 states as of April 13, 2020.

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Development and comparison of Pennsylvania’s initial guidance to federal guidance for determining what businesses were deemed to be life-sustaining.

Before discussing the comparison between Pennsylvania’s guidance to CISA guidance, it is important to understand the purpose of CISA and its responsibilities to add context to this report. CISA was established under DHS as a result of the federal Cybersecurity and Infrastructure Security Agency Act of 2018 with the responsibility of protecting America’s critical infrastructure from physical and cyber threats.³⁰ Previously, these responsibilities had been carried out by the former DHS National Protection and Programs Directorate. CISA regularly evaluates critical infrastructure with an “all-hazards approach” to ensure the security and resiliency of America’s critical infrastructure from all threats and provides general guidance on a regular basis. In the case of specific threats, however, CISA will also develop additional guidance tailored to those situations.

As a result of its responsibilities, on March 19, 2020, CISA issued a memo and guidance specific to the essential critical infrastructure workforce during COVID-19.³¹ According to the memo, CISA issued a list of “Essential Critical Infrastructure Workers” to help state and local officials protect their communities while ensuring continuity of functions critical to public health and safety, as well as economic and national security. The CISA guidance listed examples of workers within 14 sectors that are “essential to continued critical infrastructure viability,” but stated that “[r]esponse efforts to the COVID-19 pandemic are to be locally executed, state managed, and federally supported.” The CISA guidance also stated that it was intended to be advisory in nature to assist states in managing their own critical infrastructure and essential industries amid the COVID-19 pandemic.

On March 19, 2020, the Governor’s Office, as part of the initial COVID-19 business closure order, issued the IOG, a list of approved life-sustaining industries that businesses were to consult to determine whether or not they were allowed to remain open. See *Appendix C* for this initial version of the IOG.

According to the Governor’s Office, the Governor’s response team began to develop a list of life-sustaining businesses specific to Pennsylvania prior to CISA issuing the memo and guidance

³⁰ <https://us-cert.cisa.gov/ncas/current-activity/2018/11/19/NCCIC-Now-Part-Cybersecurity-and-Infrastructure-Security-Agency#:~:text=On%20November%2016%2C%202018%2C%20the%20President%20signed%20into,a%20mission%20that%20requires%20effective%20coordination%20and%20> (accessed June 16, 2021).

³¹ CISA’s *Memorandum on Identification of Essential Critical Infrastructure Workers during COVID-19 Response* and CISA’s *Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response*, both which are presented in *Appendix B*.

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on March 19, 2020.³² In order to determine which businesses were life-sustaining and would remain open, the Governor's response team focused on which businesses provided life-sustaining services or products by reviewing the classifications set forth by the North American Industry Classification System (NAICS) and decided whether each industry group was life-sustaining or non-life-sustaining.³³ The Governor's Office further stated that the response team reviewed the descriptions for the industry groups and based upon those descriptions and knowledge of the types of goods and services necessary to assure the health and welfare of Pennsylvanians, along with the intention to provide for a robust response to the pandemic, determined whether each industry group was life-sustaining or non-life-sustaining. The response team also spent time evaluating each classification and analyzing whether businesses in each were essential for life. For the business type descriptions that the response team determined did not establish the business as essential for life, those businesses were required to close.

As described in the explanations above, the focus of CISA in developing its guidance was different than the Governor's Office focus in developing the IOG. The CISA guidance included bulleted lists of essential workers within each of the 14 sectors that were considered critical for not only protecting public health and safety, but also for economic and national security. The IOG, however, was more complex in that it was created to identify which industry groups in Pennsylvania were and were not considered life-sustaining. Specifically, the IOG listed 10 industries, 19 sectors broken down into 105 subsectors, followed by 306 industry groups with a notation for each industry group as to whether it was allowed to continue operations.³⁴ As previously described, these industry groups were broken down based on their NAICS code and in some cases, included additional notes with further guidance or certain exceptions.

We attempted to compare the CISA guidance and the IOG and found that the sectors and industries do not align in a manner that facilitates a detailed comparison. For example, grocery stores were included in the CISA guidance's "Food and Agriculture" sector but in the IOG, they

³² The response team was a group of individuals within the Governor's Office and from state agencies formed to work on issues related to the COVID-19 pandemic.

³³ "The North American Industry Classification System (NAICS) is the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy." <https://www.census.gov/naics/> (accessed April 27, 2021). The NAICS does not classify businesses as life-sustaining or non-life-sustaining. Our research on analysis performed by the MultiState Associates found that Pennsylvania was one of only two states to issue guidance utilizing the NAICS code as a component of its determination of what type of businesses could remain open. MultiState Associates tracked states that issued Stay-at-Home orders and what businesses were defined as essential in these states during the COVID-19 pandemic, https://docs.google.com/document/d/e/2PACX-1vSXZCFcBIrRDRC-SWyc36T0S0hjXxT9wZAGM4V01_xtbywLBEEn0o_kgmfs0dMJ4VbpPh30j2ZFZ3TH/pub (accessed June 26, 2020).

³⁴ For one of the 19 sectors, the IOG does not break down the sector further but instead lists the same name for the sector, subsector, and industry group. Similarly, for 33 of the 105 subsectors, the IOG does not break down the subsector further but instead lists the same name for the subsector and industry group.

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were relegated to an industry group within “Food and Beverage Stores,” a subsector within the “Retail Trade” sector, a sector within the “Trade, Transportation, and Utilities” industry. As a result, the comparison we present in the following table is generally a high-level comparison of the sectors that were included in the March 19, 2020 versions of the CISA guidance and the IOG along with other information that was included in each guidance. We have also identified several sectors which are not directly comparable between the CISA guidance and the IOG.

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Comparison of the March 19, 2020 versions of the CISA guidance to the IOG							
CISA Guidance ^{a/}		IOG ^{b/}					
Sectors	Number of Bullets ^{c/}	Industry	Sector	Number of Subsectors	Number of Industry Groups	Industry Groups Life-Sustaining	
						Yes	No
Healthcare/Public Health	16	Education and Health Services	Educational Services	7	7	0	7
			Healthcare and Social Assistance	4 ^{d/}	18	17	1 ^{e/}
Transportation and Logistics	12	Trade, Transportation, and Utilities	Wholesale Trade	3	19	14	5
			Retail Trade	12	27	7	20
			Transportation and Warehousing	11	29	25	4 ^{f/}
			Utilities	1	3	3	0
Water and Wastewater	9						
Energy	27						
Communications and Information Technology	15	Information	Information	6	14	10	4 ^{g/}
Critical Manufacturing	1	Manufacturing	Manufacturing	20	78	26	52
Chemical	5			1 ^{h/}	7	6	1 ^{i/}
Financial Services	3 ^{j/}	Financial Activities	Finance and Insurance	5	11	4	7
			Real Estate and Rental and Leasing	3	8	4	4
N/C ^{k/}		Professional and Business Services	Professional, Scientific, and Technical Services	9	9	2	7
			Management of Companies and Enterprises	1	1	0	1
Hazardous Materials	3		Administration and Support and Waste Management and Remediation Services	2	11	6	5
Law Enforcement, Public Safety, First Responders	6	N/C ^{k/}					

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Food and Agriculture	14	N/C ^{k/}					
Public Works	5	N/C ^{k/}					
Other Community-Based Government Operations and Essential Functions	12	N/C ^{k/}					
Defense Industrial Base	2	N/C ^{k/}					
N/C ^{k/}		Natural Resources and Mining	Agriculture, Forestry, Fishing, and Hunting	5	19	15	4
			Mining, Quarrying, and Oil and Gas Extraction	3	5	1	4
N/C ^{k/}		Construction	Construction	3	10	0	10
N/C ^{k/}		Leisure and Hospitality	Arts, Entertainment, and Recreation	3	9	0	9
			Accommodation and Food Services	2	7	4 ^{l/}	3
N/C ^{k/}		Other Services (Except Public Administration)	Other Services (Except Public Administration)	4	14	9	5 ^{m/}
Total	130		Total	105	306	153	153

^{a/} - Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response, CISA, Version 1.0 (March 19, 2020). See *Appendix B* for copy of guidance.

^{b/} - The first version of the IOG was released on March 19, 2020, and was effective immediately, with enforcement actions, as amended, effective March 23, 2020. See *Appendix C* for copy of this first version of the IOG that includes detail on all industries, sectors, subsectors and industry groups and whether they were able to continue physical operations.

^{c/} - Each bullet in the CISA guidance was one or two sentences in length and provided information on or a list of workers considered to be essential within that sector. See below footnote ^{j/} as an example of bullets listed in the CISA guidance for “Financial Services”.

^{d/} - Two of the subsectors included the note “[e]lective procedures prohibited.”

^{e/} - Child Day care services were not permitted to operate.

^{f/} - The Charter Bus Industry and Scenic and Sightseeing Transportation were not permitted to operate.

^{g/} - Software Publishers, Motion Picture and Video Industries, Sound Recording Industries, and Telecommunication Resellers were not permitted to operate.

^{h/} - IOG includes chemical in its manufacturing sector, however, for purposes of this table we separated it out to compare it to the chemical sector listed in the CISA guidance.

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^{i/} - Paint, coating, and adhesive manufacturing was not permitted to operate.

^{j/} - CISA guidance listed the following three bullets: (1) Workers who are needed to process and maintain systems for processing financial transactions and services (e.g., payment, clearing, and settlement; wholesale funding; insurance services; and capital markets activities). (2) Workers who are needed to provide consumer access to banking and lending services, including ATMs, and to move currency and payments (e.g., armored cash carriers). (3) Workers who support financial operations, such as those staffing data and security operations centers.

^{k/} - Not Comparable - There is no direct match for the sector between the CISA guidance and IOG, however, the areas within the sector may be spread out across several sectors or industries.

^{l/} - Two of the industry groups in Accommodation indicated “Residential only” and two of the industry groups in Food Services and Drinking Places indicated “Takeout only.”

^{m/} - One of the industry groups, Personal Care Services, which was not permitted to operate, included a note indicating “This category includes barbershops, nail salons, beauty salons, gyms (including yoga, barre and spin facilities).”

Source: This table was compiled by the staff of the Department of the Auditor General from information in the March 19, 2020 versions of the CISA guidance and IOG documents received from DCED management.

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Subsequent to issuing the initial IOG, the Governor's Office stated that the response team also reviewed the COVID-19 specific CISA guidance issued on March 19, 2020. Based on the team's review, the Governor's Office revised the list of life-sustaining businesses within the IOG to more closely align with many sectors considered by CISA to be critical infrastructure and issued a second IOG on March 21, 2020.³⁵ The Governor's Office indicated that it did not, however, fully defer to the CISA guidance because of its broad nature and the fact that it was only advisory in nature and further suggested that its unqualified adoption would have resulted in interpretive differences by businesses, law enforcement, and local government. In addition, the Governor's Office explained that adopting the CISA guidance verbatim would have potentially allowed a large number of industries that were not critical to maintaining life-sustaining resources to continue operations at a time when new COVID-19 cases continued to rise and that this was not in alignment with the Governor's goal of putting public health and safety first. As a result, the Governor's Office decided to use its own criteria to determine whether businesses were considered life-sustaining. The Governor's Office further stated that they did not adopt subsequent amendments to the CISA guidance.

As reflected in the above table, the IOG was more complex compared to the CISA guidance because the IOG contained "No" answers that prohibited continuation of business activity absent a waiver. Additionally, based on the Governor's Office comments noted in the previous paragraph, the IOG was developed to restrict more businesses within Pennsylvania from remaining open as compared to the CISA guidance. See the next section for examples of Pennsylvania's use of more narrow guidance.

Effects of Pennsylvania's use of more narrow guidance as compared to federal guidance.

Because we could not reasonably quantify the effect of the Governor's Office use of more narrow guidance as compared to the CISA guidance, we instead include some examples in this section of the effects on certain Pennsylvania business types that were initially required to close but later allowed to reopen or reopen under certain circumstances. Specifically, our examples include businesses judgmentally selected based on differences noted during our comparison of the state and federal guidance and include food trucks, automobile sales, manufacturing, healthcare, and sales of food and beverage products.

Food Trucks

In the "Food and Agriculture" section of the CISA guidance, essential workers listed within the bullets included those that support retail operations that sell food and beverage products and also

³⁵ See *Finding 2* for discussion regarding the 10 versions of the IOG issued by the Governor's Office and confusion resulting from the evolving guidance.

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quick serve food operations for carry-out, which would reasonably include food truck workers. In Pennsylvania, however, food trucks were initially not allowed to operate because food truck businesses are included within the NAICS code for “Special Food Services” and were not permitted to operate per the IOG. Both food trucks and caterers are included in the same NAICS code. While we understand the need for caterers of events to cease operations during a public health emergency, restaurants were permitted to offer take-out food. Closing food truck operations created many questions and confusion since the very premise of a food truck is to serve take-out food. According to DCED management, food trucks were eventually granted a waiver to continue operations with guidance provided by the Pennsylvania Department of Agriculture.³⁶

Automobile Sales

The CISA guidance listed employees supporting or enabling transportation functions as essential critical infrastructure workers; however, the 10 versions of the IOG during the business closure order did not allow automobile dealers to operate.³⁷ Because of this restriction, we found news reports indicating that Pennsylvania residents were traveling to Ohio to purchase vehicles because Ohio allowed automobile sales.³⁸ Additionally, DCED management provided us with correspondence from a legislator to the DCED Secretary that relayed the story of a nurse in Pennsylvania whose car was determined to be a total loss in an accident. As a result of the IOG prohibiting automobile dealers from operating, the nurse was unable to purchase a replacement vehicle in Pennsylvania and instead traveled to Ohio to purchase another vehicle.³⁹ The restriction on automobile sales not only adversely affected Pennsylvania automobile dealerships but resulted in Pennsylvania residents being forced to travel out-of-state to purchase a vehicle necessary to travel to their critical jobs during a time when residents were being asked to limit travel in order to limit the spread of the virus.

Manufacturing

Under the Critical Manufacturing sector of the CISA guidance, workers necessary for the manufacturing of materials and products needed for the transportation industry were listed as essential; however, the 10 versions of the IOG during the business closure order for all seven

³⁶ DCED management did not provide the date when food truck owners began to be granted waivers to continue operations with guidance; however, we found that the four food truck businesses selected in our review of 150 applications (described in *Finding 4*) received a corrected response to allow operations with conditions on April 21, 2020. This, however, was not until 32 days after the start of the waiver program on March 20, 2020.

³⁷ Some exceptions were made in the April 28, 2020 version which referred to the guidance issued on April 20, 2020 that authorized online vehicle sales.

³⁸ <https://www.autonews.com/dealers/another-woe-dealers-losing-business-nearby-states> (accessed June 2, 2021) quoted an automobile dealer that had lost vehicle sales to businesses in three bordering states where sales were continuing during the pandemic.

³⁹ According to the MultiState Associates breakdown of guidance found in *Appendix F*, Ohio followed a modified version of the CISA guidance.

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industry groups noted in the Transportation Equipment Manufacturing Subsector were listed as “No” for continuing operations (except for defense industrial base).⁴⁰ Therefore, businesses in Pennsylvania that manufactured, for example, parts for motor vehicles were not allowed to operate, whereas, the CISA guidance listed the workers of these type of manufacturing businesses as essential.

Healthcare

CISA guidance listed physicians as essential workers. Although the IOG also allowed physicians to continue providing services, it listed an exception stating that elective procedures were prohibited. The IOG was therefore more restrictive than CISA guidance which resulted in the closing of physician offices whose primary services were to perform elective procedures. Although many procedures may be considered elective in theory, patients waiting for corrective procedures, such as for their eyes, knees, hips, etc., may consider these procedures critical to their quality of life.

Sales of food and beverage products

While the CISA guidance listed workers supporting groceries, pharmacies, **and other retail** businesses that sell food and beverage products as essential workers, the IOG specifically only allowed grocery and specialty food stores to continue to operate. Therefore, some businesses in Pennsylvania whose primary operation was not considered to be a grocery store, but still sold food and beverage products, were not allowed to continue to operate. Non-grocery store small businesses wrote in their application requests that they provided food items to local residents who rely on these items when they are unable to obtain transportation to grocery stores; however, due to the IOG restrictions these businesses were not permitted to operate. This potentially created a hardship for people that did not have the means or transportation to travel to grocery stores that were permitted to operate.

In conclusion, we recognize the decision to enact the business closure order was certainly a difficult decision requiring swift action in an attempt to protect the health and safety of residents throughout the state; however, it jeopardized the livelihood of some businesses and its workers throughout the Commonwealth. If in the unfortunate event this type of decision is ever needed again, we make several recommendations below to assist in this regard.

⁴⁰ The seven industry groups were related to motor vehicles, aerospace, railroad, ship and boat, and the other transportation equipment.

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Recommendations for Finding 1

We recommend that DCED management, in conjunction with the Governor's Office:

1. Evaluate or perform a review of public health implications in conjunction with business/livelihood impacts of the business shutdown involving members from various stakeholders (government agencies, healthcare providers and advocates, businesses and business associations, legislature, etc.), along with reviewing other studies conducted on these impacts, in order to have a more objective and comprehensive plan in place to reduce negative consequences if mandated business closures are necessary in the future.
2. The Governor's Office should re-evaluate its process for determination of life-sustaining and non-life-sustaining industry groups, in consultation with the federal government, the General Assembly, other state agencies, and stakeholder groups.
3. The Governor's Office (or designated state agency) should routinely update its list of life-sustaining industry groups in order to keep it current in the event of future health or security emergencies.
4. Establish a steering committee with members from the General Assembly and Governor's Office to promulgate regulations or recommendations on an ad hoc basis to allow businesses identified as non-life-sustaining other means of continuing operations (i.e., contactless delivery, appointment-only service, pick up service, etc.) to enable their survival in future times of regional or statewide emergency.

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Finding 2 – The guidance available to businesses and used by DCED to determine whether or not businesses are life-sustaining continued to evolve throughout the waiver program.

As discussed in *Finding 1*, the Governor’s Office, in alignment with the Governor’s stated goal of prioritizing public health and safety as the number of new COVID-19 cases continued to rise, developed its own guidance for determining whether or not businesses were considered life-sustaining. On March 19, 2020, as part of the initial COVID-19 business closure order, the Governor’s Office issued *Pennsylvania Industry Operation Guidance* (IOG), which contained a list of approved life-sustaining industry groups that businesses were to consult to determine whether or not they were permitted to remain open. Businesses that were identified on the IOG as non-life-sustaining, but who otherwise believed that they could help mitigate the crisis by providing a life-sustaining service however, could seek an exemption from the closure orders through the business waiver request program (waiver program). The waiver program, administered by the Pennsylvania Department of Community and Economic Development (DCED), accepted applications from March 20, 2020 through April 3, 2020. See *Findings 3, 4, and 5* for additional discussion regarding the development of the waiver program and the results of our application testing.

Subsequent to the initial IOG version that was issued on March 19, 2020, the Governor’s Office issued nine additional versions from March 21, 2020 through May 28, 2020. In addition to the information contained in the IOG, during this same time period, the Governor’s Office developed the *Life Sustaining Business Frequently Asked Questions* (FAQ) that was posted on DCED’s website to provide additional information regarding the IOG and the waiver program. As the IOG was modified and additional questions were raised, the FAQ was also revised.

Overall, DCED posted a total of 15 versions of the FAQ. The following table summarizes the dates in which each of the versions of the IOG and FAQ were issued during the waiver program:

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IOG and FAQ Issue Dates			
	Date	IOG	FAQ
Dates that each Version of the IOG and FAQ were issued during the DCED waiver application period.	March 19, 2020	Version 1	
	March 21, 2020	Version 2	
	March 24, 2020	Version 3	Version 1
	March 27, 2020		Version 2
	March 31, 2020		Version 3
	April 1, 2020	Version 4	Version 4
Dates that each version of the IOG and FAQ were issued subsequent to the DCED waiver application period.	April 9, 2020		Version 5
	April 10, 2020		Version 6
	April 14, 2020		Version 7
	April 20, 2020	Version 5	
	April 27, 2020	Version 6	Version 8
	April 28, 2020	Version 7	
	May 6, 2020		Version 9
	May 7, 2020		Version 10
	May 8, 2020	Version 8	Version 11
	May 11, 2020	Version 9	Version 12
	May 15, 2020		Version 13
	May 22, 2020		Version 14
	May 28, 2020	Version 10	Version 15

Source: This table was compiled by the staff of the Department of the Auditor General from the dates of the IOG and FAQ documents received from DCED management.

As noted in the above table, there were four versions of each of the IOG and FAQ issued during the time period that DCED accepted waiver applications. Businesses needed to utilize each of the documents, despite their developing guidance, to determine whether they needed a waiver request and to complete and submit a waiver application. Furthermore, businesses needed to continue to review the evolving IOG and FAQ versions to determine whether the guidance changes affected the operations of their businesses. In other words, with each new version of the IOG and FAQ came the ongoing responsibility of businesses to ensure that they were utilizing the most current versions of the guidance when determining if its business was deemed life-sustaining.

From the perspective of the administration of the waiver program, it was important for the commonwealth employees who processed the waiver applications to understand the specific guidance that was relevant on the day the waiver applications were being reviewed in order to properly determine whether a waiver should be granted and respond to the business accordingly.

New versions of the IOG were issued whenever the Governor's Office: (1) changed its decisions on which industry groups were deemed life-sustaining, which was indicated in the IOG with either a "Yes" or a "No" for each industry group; or (2) made changes in the IOG notes that provided additional information or exceptions to the decisions for industry groups. The following

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table identifies which industry groups were affected by a change and includes the “Yes” or “No” decision as it was reported in each of the 10 versions of the IOG listed in the above table:

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Versions of the IOG					May Continue Physical Operations									
Industry	Sector	Subsector	Industry Group	NAICS Code	3/19/20	3/21/20	3/24/20	4/1/20	4/20/20	4/27/20	4/28/20	5/8/20	5/11/20	5/28/20
Natural Resources and Mining	Agriculture, Forestry, Fishing, and Hunting	Forestry and Logging	Timber Tract Operations	1131	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
			Forest Nurseries and Local Gathering of Forest Products	1132	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
			Logging	1133	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
		Support Activities for Agriculture & Forestry	Support Activities for Forestry	1153	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Mining, Quarrying, and Oil and Gas Extraction	Mining	Coal Mining	2121	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
		Mining	Metal Ore Mining	2122	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
		Mining	Nonmetallic Mineral Mining and Quarrying	2123	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
		Support Activities for Mining		2131	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
		Wood Product Mfg.	Sawmills and Wood Preservation	3211	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Manufacturing	Manufacturing	Wood Product Mfg.	Veneer, Plywood, and Engineered Wood Product Mfg.	3212	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
		Wood Product Mfg.	Other Wood Product Mfg.	3219	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
		Printing & Related Support Activities		3231	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

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Versions of the IOG					May Continue Physical Operations										
Industry	Sector	Subsector	Industry Group	NAICS Code	3/19/20	3/21/20	3/24/20	4/1/20	4/20/20	4/27/20	4/28/20	5/8/20	5/11/20	5/28/20	
Manufacturing	Manufacturing	Nonmetallic Mineral Product Mfg.	Glass and Glass Product Mfg.	3272	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
		Nonmetallic Mineral Product Mfg.	Lime and Gypsum Product Mfg.	3274	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
		Fabricated Metal Product Mfg.	Architectural and Structural Metals Mtg.	3323	N/A	N/A	N/A	No	No	No	No	No	No	No	
Trade, Transportation, & Utilities	Wholesale Trade	Merchant Wholesalers, Durable Goods	Lumber and Other Construction Materials Merchant Wholesalers	4233	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
	Retail Trade	Food & Beverage Stores	Specialty Food Stores	4452	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
	Retail Trade	Food & Beverage Stores	Beer, Wine, and Liquor Stores (Beer Distributors to Remain Open)	4453	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
		Food & Beverage Stores	Beer, Wine, and Liquor Stores	4453	N/A	No ^{a/}	No ^{a/}	No ^{a/}	Yes	Yes	Yes	Yes	Yes	Yes	

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Versions of the IOG					May Continue Physical Operations										
Industry	Sector	Subsector	Industry Group	NAICS Code	3/19/20	3/21/20	3/24/20	4/1/20	4/20/20	4/27/20	4/28/20	5/8/20	5/11/20	5/28/20	
Information	Information	Telecommunications	Telecommunications Resellers	517911	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Financial Activities	Finance and Insurance	Insurance Carriers and Related Activities	Insurance Carriers	5241	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
			Agencies, Brokerages, and Other Insurance Related Activities	5242	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
		Funds, Trusts, and Other Financial Activities	Insurance and Employee Benefit Funds	5251	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Professional and Business Services	Professional, Scientific, and Technical Services	Accounting, Tax Preparation, Bookkeeping, and Payroll Services	Accounting, Tax Preparation, Bookkeeping and Payroll Services	5412	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	

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Versions of the IOG					May Continue Physical Operations									
Industry	Sector	Subsector	Industry Group	NAICS Code	3/19/20	3/21/20	3/24/20	4/1/20	4/20/20	4/27/20	4/28/20	5/8/20	5/11/20	5/28/20
		Other Professional, Scientific, and Technical Services		5419	Yes	No	No	No	No	No	No	No	No	No
		Management of Companies and Enterprises		5511	No	N/A	N/A	No	No	No	No	No	No	No
Education and Health Services	Health Care and Social Assistance	Ambulatory Health Care Services	Offices of Dentists	6212	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Yes
Leisure and Hospitality	Accommodation and Food	Accommodation	Traveler Accommodation	7211	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Other Services (Except Public Administration)	Other Services (Except Public Administration)	Personal and Laundry Services	Dry Cleaning and Laundry Services	8123	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

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Versions of the IOG					May Continue Physical Operations									
Industry	Sector	Subsector	Industry Group	NAICS Code	3/19/20	3/21/20	3/24/20	4/1/20	4/20/20	4/27/20	4/28/20	5/8/20	5/11/20	5/28/20
Other Services (Except Public Administration)	Other Services (Except Public Administration)	Religious, Grant-making, Civic, Professional, and Similar Organizations	Civic and Social Organizations	8134	Yes	No	No	No	No	No	No	No	No	No
		Private Households	Private Households	8141	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Public Administration	Public Administration	Executive, Legislative, and Other General Government Support	Justice, Public Order, and Safety Activities	9211	N/A	N/A	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes
			Administration of Human Resource Programs	9221	N/A	N/A	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes
			Administration of Environmental Quality Programs	9231	N/A	N/A	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes
			Administration of Housing Programs, Urban Planning, and Community Development	9241	N/A	N/A	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes
			Administration of Economic Programs	9251	N/A	N/A	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes

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Versions of the IOG					May Continue Physical Operations									
Industry	Sector	Subsector	Industry Group	NAICS Code	3/19/20	3/21/20	3/24/20	4/1/20	4/20/20	4/27/20	4/28/20	5/8/20	5/11/20	5/28/20
Public Administration	Public Administration	Executive, Legislative, and Other General Government Support	Space Research and Technology	9261	N/A	N/A	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes
			National Security and International Affairs	9271	N/A	N/A	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes
			Executive, Legislative, and Other General Government Support	9281	N/A	N/A	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes
N/A - The Sector, Subsector and Industry Group were not listed on that version of the IOG.														
a/ - Except beer distributors permitted.														

Source: This table was compiled by the staff of the Department of the Auditor General from information in each version of the IOG received from DCED management.

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Looking closely at the above table, it is evident that not every version of the IOG had a corresponding change in one of the 39 industry groups. For example, there are no industry group changes when comparing the May 8, 2020, May 11, 2020, and May 28, 2020, versions. For these versions, instead of changes being made to the industry groups themselves, changes were made to the notes in the IOG. These notes were added over time, which also necessitated the need to issue multiple versions of the IOG. The following are examples of the notes in various versions of the IOG:

- Exceptions to a “No” for emergency repairs, pet supplies stores, veterinary services, and pharmacies.
- Exceptions to a “Yes” that prohibited elective procedures and in-person sales and limited restaurants to takeout only.
- Reference to a website to review guidance from the Department of Education for industry groups in the Education and Health Services industry.
- Exceptions as authorized under a version of the CISA guidance for multiple industry groups.
- Exceptions based on cited court orders or similar federal court directives.
- Child day care services were listed as “No,” but the note indicated, “Except where permitted by waiver.” There, however, was no further information regarding how to determine who was granted a waiver. In another IOG version, there was a different note that indicated, “Refer to Stay at Home Guidance,” but again, no further information was provided for where that guidance could be found or what version of the guidance should be used.
- For various construction related industry groups listed as “No,” some of the versions included a note indicating that there were exceptions as authorized in the April 20, 2020, amendments to the business closure orders; however, there was no link or additional information regarding where to find the amendments.
- Exceptions based on orders from the Department of State or the Department of Health.

As previously stated, in addition to the multiple versions of the IOG, there were multiple versions of the FAQ issued. The most substantial changes were included within the March 31, 2020, and April 1, 2020, versions as follows:

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March 31, 2020 Version

- Childcare – The first two versions of the FAQ listed categories of facilities that could maintain in-person operations limited to service employees of life-sustaining businesses.⁴¹ The new version stated that programs must suspend in-person operations unless they met one of the four criteria listed.⁴²
- Notary – Language was added allowing notaries to provide services utilizing audio-visual technology.
- Long-term care – Language was added that all long-term care entities were permitted to maintain in-person operations as an individual and family service.
- Car dealerships – Language was added stating that automobile dealers could not continue physical sale and leasing operations, but certain activities such as repairs could continue. New and used sales at dealerships were not permitted.
- Apartment leasing offices – Language was added including that only emergency housing and emergency maintenance would qualify as life-sustaining services, virtual and telework operations must be the primary option, and in-person work was only to be performed on the most limited basis possible.
- Short term rentals – Language was added stating that short term rentals which is advertised as a place regularly rented to guests more than three times in a year for periods of less than one month, or rented through a home-share website was not authorized. A list of exceptions was provided which included businesses such as hotels and rentals to persons performing life-sustaining work or travelers engaged in non-vacation commercial activities.

April 1, 2020

- Garden centers – Language was added stating that garden centers were not authorized to maintain in-person operations. This restriction applied to both independent garden centers, as well as those attached to large retail chains or grocery stores.

According to DCED management, the waiver program was built from the ground up in a few short days. In fact, DCED management described it as “building the plane in the air.” As a result, many of the processes and procedures evolved and changed throughout the short life of the waiver program. This in turn necessitated the need to make changes to the life-sustaining guidance as time went on. Although it is generally better to limit changes to any program or

⁴¹ The categories listed were (1) Child care facilities operating under the Department of Human Services, Office of Child Development and Early Learning waiver process; (2) Group and family child care operating in a residence; and (3) Part-day school age programs operating under an exemption from the March 19, 2020, business closure orders.

⁴² The four criteria included (1) Family Child Care Home; (2) Group Child Care Home operating in a residence; (3) Child Care Center or Group Child Care Home operating outside a residence that has received a waiver to provide care for children of employees of life-sustaining businesses; and (4) part-day school age program that has received a waiver to remain open.

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process in order to avoid confusion, it is understandable that some changes would need to be made under these circumstances.

These guidance changes would have been one of many aspects of this program that caused confusion among businesses throughout the commonwealth. We discuss the overall difficulties and frustration experienced by businesses in *Finding 4* and *Finding 5*. Additionally, these guidance changes could have also affected the decisions made by the commonwealth employees who processed the waiver applications as discussed in *Finding 4* and the potential inconsistent decisions among industries as further described in *Finding 5*.

Recommendations for Finding 2

We recommend that in the event that this waiver program (or similar program) is ever utilized again, DCED management, in conjunction with the Governor's Office:

1. Attempt to limit the number of changes made to the respective operating guidance developed/utilized.
2. Consider identifying/highlighting any necessary changes made in each version of guidance for clarification and ease of use.
3. Provide the link or location to where the document can be accessed for notes added referring to an additional source or document to use in order to determine whether a business is life-sustaining or not.

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Finding 3 – Deficiencies related to the development of the waiver program resulted in a lack of accountability and transparency.

The Governor's Office assigned the Pennsylvania Department of Community and Economic Development (DCED) the responsibility of administering the business waiver request program (waiver program). With that responsibility came the challenge of building the waiver program from the ground-up in a few short days. Some of the major processes that DCED management needed to develop during that short period of time included the following:

- A mechanism for businesses to provide necessary information to request a waiver (online application).
- A mechanism for tracking the information businesses provided (database).
- A mechanism for documenting DCED's process for reviewing applications and the decisions made (database).
- A mechanism for communicating the decisions to the businesses (emails).

Because of the extremely short time period in which DCED was given to develop and implement the waiver program, it is reasonable to assume that these mechanisms would have been revised as the need for changes became evident once DCED began operating the program.

The focus of this finding is to discuss the development of the waiver program with respect to the information requested on the application (including revisions to the application) and the information recorded in the two databases.⁴³ We also discuss the lack of retaining certain communications that were to be sent to businesses and the lack of establishing the number of days (i.e., timeliness) it should take to process an application.⁴⁴ As a result, the finding is organized into the following sections:

- Deficiencies related to the waiver application document.
- Deficiencies related to the information recorded and retained in the two databases.
- Failure to retain certain communications that were sent to businesses.
- Failure to establish a timeframe for processing applications, and taking up to 28 days in some cases for DCED to initially process waiver applications.

⁴³ The initial database was used until March 26, 2020, when it was replaced by a second database that was used for the remainder of the program.

⁴⁴ See *Finding 4* and *Finding 5* where we discuss the effectiveness of DCED's review of the applications.

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It is vital that DCED implements improvements to management controls over the waiver program to address these issues so that appropriate controls are in place in the event that the Commonwealth ever encounters the need to enact another business shutdown.

Deficiencies related to the waiver application document.

In total, DCED received 42,380 waiver applications during the period March 20, 2020 through April 3, 2020, the closing date of the waiver application program.⁴⁵ During that period, DCED posted online, five different versions of the waiver application for businesses to use to request a waiver from the business closure orders.

As described in the *Introduction and Background*, all versions of the waiver application requested the following information:

- Business name, address, and county.
- Applicant's name and contact information.
- Business description and number of employees.
- Justification as to how the business meets the definition of life-sustaining.
- How the business planned to meet the CDC's recommended guidelines to maintain employee safety during the pandemic.
- How many employees would be in the company's office or physical location.

Based on our review of the five waiver application documents and associated audit procedures, we found two deficiencies related to the information requested from the businesses:

1. The business waiver application questions did not provide specific direction to businesses on what information to provide in their applications.

DCED management stated that the intent of the online application for the waiver program was to make it as easy as possible for applicants to provide information about how their businesses qualified as life-sustaining. We found however that some of the questions (e.g., business description and justification as to how the business meets the definition of life-

⁴⁵ See *Introduction and Background* for details regarding the 42,380 waiver applications in the data file provided by DCED. We determined that the reliability of this data is sufficiently reliable in regards to completeness and accuracy of the application information submitted by businesses, but with significant limitations as to the reliability of data regarding the review process, including results of the review process, comments, and responses and/or notification letters issued to businesses. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings and conclusions as noted in *Appendix A*. Also, according to the then Deputy Chief of Staff for the Governor's Office, the direction to end the waiver program was verbally communicated to various DCED senior staff and no written documentation is available to support this decision.

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sustaining) were very general and did not provide businesses with specific guidance on what should be included in their application.

For example, consideration for granting a waiver was sometimes dependent on the method a business planned to provide its product to its customers. It was not until the April 10, 2020, version of the *Life Sustaining Business Frequently Asked Questions* (FAQ) guidance that first indicated the method for businesses delivering their product was limited to delivery to a customer's home (pick up at the business by the customer was not permitted except for life-sustaining items such as food and groceries). It, therefore, would have been beneficial for the application to include a question asking the business to provide specific information for how it intended to get its product to customers. Without this question, a business may or may not have included that its intent was to deliver the product to customers. If, however, a business stated that it intended to deliver its product to the customer, DCED may have been more likely to grant the waiver.

Another example relates to how the business may have answered the question regarding whether they met the definition of life-sustaining. Although the intention of the question may have been for the business to provide an explanation as to how the products or services that it offers would be considered life-sustaining for the public, businesses may have misinterpreted the question, as we found in two of the responses from the selection of 150 applications we reviewed and as discussed in *Finding 4*. In both cases, it appears that the businesses responded as to how business operations were life-sustaining as it related to them personally. One applicant stated in their justification that their business was life-sustaining because they needed to continue to operate to "Make ends meet." A second business justified remaining open by responding, "My livelihood. Unable to collect unemployment."

With the application questions being general and not providing businesses with sufficient direction as to what specific information was necessary for DCED to make the correct decision, it was left up to the business to decide the type and amount of information and level of detail to include on the application. The justifications provided by the 150 businesses we selected for testing regarding how the businesses were life-sustaining ranged from 3 words to 897 words.⁴⁶ Applicants' experience with completing such applications varied greatly, from the owners of the smallest businesses across the Commonwealth to executive management and potentially legal counsel of large corporations. Applicants may not have fully understood how critically important it was to include certain language that DCED was looking for when making decisions on applications.

⁴⁶ The 150 businesses are further discussed in *Finding 4* and *Finding 5*.

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2. Businesses were not required to attest to the accuracy of the information submitted on their waiver applications until two days before applications were no longer accepted.

As previously noted, DCED posted five different versions of the waiver application for businesses to use to request a waiver from the business closure orders during the 15-day period of March 20, 2020 to April 3, 2020. It was not, however, until the final version of the application was issued on April 1, 2020, only two days before DCED stopped accepting waiver applications, that a section was added requiring the applicant to acknowledge the following:

- The applicant read all of the criteria regarding life-sustaining businesses.
- The business may require and qualify for a waiver.
- To attest to the truth of information being provided on the application.⁴⁷

Although we commend DCED for revising the application to include this attestation, which is important to help ensure the accuracy of the information presented, we found that 80 percent of the total applications submitted during the 15-day period did not include this acknowledgement. As a result, there was a risk that businesses desperate to continue to operate during the pandemic to maintain the livelihoods of the business owners and their employees may have added inaccurate or exaggerated language to their applications in an effort to obtain a waiver in order to continue operations.

Deficiencies related to the information recorded and retained in the two databases.

As previously noted, the waiver application was electronic and available online for businesses to complete and submit. DCED utilized a database to track the applications that were submitted and used the same database to review the applications and document the decisions made. As explained in the *Introduction and Background*, in general, businesses were given a YES for granting a waiver, NO for denying a waiver, or Not Required (NR) to indicate that a waiver is not necessary and the business can continue to operate. DCED management stated that these responses only applied to the portions of the business described in the waiver application. Businesses were notified by email of DCED's decisions.

⁴⁷ The applicant was required to check a box to affirm that: "I verify the following information provided in this request for exemption is true and correct to the best of my knowledge and belief. I understand that false statements made herein are subject to the penalties of 18 PA. C.S. Subsection 4904, relating to unsworn falsification to authorities." Additional check boxes were also added for the applicant to indicate if he or she had previously submitted a request for exemption for this business site.

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According to DCED, it utilized two databases during the course of the waiver program. The first database system was utilized to process applications from March 20, 2020 through March 26, 2020, and the second database was utilized beginning on March 26, 2020.⁴⁸ The application information and related decisions recorded in the first database were transferred into the second database. As a result, the entire population of waiver program application information was ultimately housed in that second database.⁴⁹ In general, the second database processed the applications in the same manner as the first database, but the second database allowed for the recording of additional information, such as who performed certain steps in the process, and provided a comments field that could be used to record other information.

Based on our review of the data file provided by DCED and information provided by DCED through subsequent correspondence, we found that all of the steps in the waiver application review process were not documented and retained in the databases. In fact, DCED management acknowledged that the employees initially reviewing and processing the waiver request applications (reviewers) or subsequently reviewing the decisions made regarding the applications (i.e., legal counsel or staff from the Quality Control team (QC), as previously discussed in the *Introduction and Background*) were not required to:

- (1) Document the justification regarding the initial decision made regarding the application.
- (2) Document the justification regarding any changes made to an initial decision on the waiver request.

As a result, the first database did not include a field to capture any decision-making justifications. In the second database, although a Comments field was added, based on our review of 150 applications as described in *Finding 4*, justifications were not always included.⁵⁰ Therefore, we were unable to validate certain information, such as the basis for decisions made on an application or for any changes, if applicable, made to initial responses; who approved the change in decision; and who performed the initial and any subsequent reviews of the applications, if any.

An electronic process that does not have a physical paper trail should be designed to capture the details of all critical steps.⁵¹ This is necessary to ensure that the information supporting the review and decision-making process is documented and maintained. Without knowing who

⁴⁸ See the *Introduction and Background* for additional information regarding the databases.

⁴⁹ The data we received to conduct this audit came from the second database.

⁵⁰ Of the 150 applications reviewed, the Comments field was blank for 35 entries. The comments for the remaining 115 entries were very general and indicated that a change in the response had been made and the dates of the changes. In some of the entries, the comments indicated that the change was based on “further review” or “legal review.”

⁵¹ We consider critical steps to include, but not necessarily be limited to: 1) the initial decision, 2) justification for the initial decision, 3) individual making the initial decision, 4) subsequent/changed decision, 5) justification for the subsequent/changed decision, 6) individual that made the subsequent/changed decision, and 7) the date(s) that steps in the process occurred.

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processed or reviewed each application, why a decision was made, or why a decision was changed later, an outside entity such as an auditor cannot evaluate the reasonableness of the decisions and cannot ask the individual who made the decision why the decision was made. Additionally, there is a lack of transparency, which can lead to mistrust in government entities and the decisions that were made, especially when potential questionable or inconsistent decisions ultimately affected the livelihood of businesses or put public health and safety at increased risk which we further describe in *Findings 4 and 5*.

The following describes three other deficiencies related to the information recorded and retained in the databases in addition to the lack of recorded justifications for initial decisions and changes to decisions, which was discussed above.

1. The identity of who initially reviewed each application was not always recorded in the databases.

Based on the data provided related to the 42,380 waiver applications processed, we found that the field documenting who performed the initial processing of an application was blank for 20,681 of the 42,380 total applications. DCED management stated that the majority of the blanks occurred because the first database used from March 20, 2020 through March 26, 2020 to process 25,152 applications was not designed to capture that information. This field did not populate until the second database was implemented. We found, however, this field was also blank for 3,723 of the total 17,228 applications processed on or after March 27, 2020.⁵² DCED management stated that those fields might be blank if a special notification letter was generated instead of a YES, NO, or NR response.⁵³ If a special notification was issued, the field was not populated to identify who performed the review. DCED management stated that there might have also been instances when the database failed to capture reviewer information due to technical issues.

There was consequently no way to determine to whom questions should be addressed regarding the processing of those applications. Without a record indicating who performed the initial review of each application, there is no audit trail or means to determine which reviewer made the decisions regarding waiver applications.

⁵² DCED management stated that the new system was implemented sometime on March 26, 2020, and therefore both systems were used that particular day to process applications. For purposes of this portion of the finding, the numbers reported are based on applications that DCED received on March 27, 2020, or later.

⁵³ For certain types of businesses identified, through a keyword search, a special notification letter was generated and sent to the applicant. These included business types such as construction, auto, and golf in which a letter was issued to explain which aspects of those types of businesses could or could not continue to operate.

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2. The databases were not designed to capture subsequent reviews of the initial waiver application decisions.

Until QC was assembled on March 24, 2020, or four days after the waiver application review process was initiated, decisions made by the initial reviewer were not reviewed to ensure that the critical decision as to whether a business could remain open was appropriate.

According to DCED management, all applications were subsequently reviewed and corrected responses were issued, as necessary; however, due to the lack of documentation maintained in the databases regarding the review process, we were unable to verify this statement. Based on the data file provided, of the 42,380 applications, we found that for 42,148 of the applications, or over 99 percent, the data field indicating who performed a subsequent review was blank. DCED acknowledged that the identity of the QC reviewer would only be automatically recorded in the second database if the reviewer made a change. We, therefore, could not corroborate DCED's statement that all applications received a second review.

DCED management further stated that during the waiver program, they knew applications were reviewed by QC based on emails that the QC team leader sent to DCED management indicating that all the applications processed in that batch of applications were ready for notifications to be issued. However, based on our review of examples of these emails, because they do not list the names or identification number of the applications, we again could not verify that all applications received a second review.

3. Dates and reviewers' identities in the databases were overwritten.

DCED management stated that the second database only retained the last decision made regarding the result of the waiver application review and applicable date rather than maintaining a trail showing all of the steps that occurred and decisions made throughout the processing of the application. As a result, information such as the initial decision (YES, NO, NR) was overwritten if a subsequent review changed the decision. For example, if the original decision was a NO but later it was determined that the business met the guidelines and was emailed a corrected YES response, the response field would only reflect the final decision of YES.

Similarly, in the limited cases where the QC reviewer's identification was recorded, if a QC employee made a decision and then a second QC employee changed that decision, only the second (or final) QC employee's identification would be retained in the databases. Any earlier updates were overwritten.

Finally, we found that the database included only one field to record the date when different levels of review were performed on an application. Although there were separate fields to identify the individuals that: 1) conducted the initial review of an application; 2) reviewed the

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work performed on an application at the request of the person that performed the initial work; and 3) reviewed the work performed on the application as part of the QC process, there was only one field that populated the date that work was performed on an application. Therefore, the only date included in the database regarding work performed on an application is the last date that the application was reviewed by any of the three previously described individuals.

Failure to retain certain communications that were sent to businesses.

Although the databases indicate that responses were sent to businesses for applications that received a response of YES, NO, or NR, DCED management stated that the email tools used to generate NO and NR response emails did not retain copies of the emails. Therefore, DCED could not provide evidence to demonstrate that the responses actually communicated to the businesses agreed to the decisions NO or NR recorded in the databases.

We also found during our testing of the 150 applications (see *Finding 4*) that it appears that two applicants did not receive a response as to the decision made on their applications. Although there is a response indicated for each application, there is no date populated in the notification field. DCED management stated that since there was no date recorded, it appears that the businesses did not receive a response. Since copies of all of the responses were not retained for recordkeeping purposes, we cannot determine whether the businesses were ever appropriately issued responses.

Again, given the gravity of the circumstances of the business closure order, it should have been imperative that DCED ensure that all businesses were issued the appropriate responses to their waiver applications. Furthermore, in the event of any other business shutdown, it is vital that DCED implement essential record retention improvements.

Failure to establish a timeframe for processing applications, taking up to 28 days in some cases to initially process waiver applications.

As part of this audit, we evaluated the processing time of the waiver applications. DCED management stated that there was no specific written guidance provided to the reviewers regarding the timeframe in which waiver applications should be processed. Given the volume with which applications were being received, DCED management further stated that reviewers were instructed to review applications in as timely a manner as possible based on the information provided by the applicant. A basic web search to verify or check for supporting information was also encouraged but not to the detriment of slowing down the review process.

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As a result of DCED not defining what constituted an appropriate timeframe in which applications should be processed, we could not evaluate whether DCED met the intended timeframe. We still, however, attempted to calculate the number of days between when applications were submitted and when DCED issued businesses an initial response communicating the decision. We were unable to determine the amount of time it took to process all 42,380 applications since the system only retained the last date associated with a notification issued. We were, however, able to perform analysis for 148 of the 150 applications that we selected for detailed testing (described in detail in *Finding 4*) and found that the number of days between the application submission date and the initial response being emailed to the applicant ranged between 1 and 28 days, with an average of 5.7 days.⁵⁴ The below table illustrates the range of days it took for DCED staff to process the 148 applications and also indicates which of the two database systems was utilized to review the applications:

Days to Process	Number of Applications	Applications Processed in the First Database March 20 – 26, 2020	Applications Processed in the Second Database After March 26, 2020
1	14	8	6
2	41	39	2
3	19	14	5
4-7	42	6	36 ^{a/}
8-14	18	0	18
15-21	10	0	10
22-28	4	0	4
Total	148	67	81

^{a/} - 3 of the 36 applications were processed on March 26, 2020, the date the second database was implemented. As the result of both databases being used on this date, we are unable to determine in which database the three applications were processed. For reporting purposes, we have included them with those processed in the second database.

Source: This table was compiled by the staff of the Department of the Auditor General from data received from the Department of Community and Economic Development. We determined that the reliability of this data is sufficiently reliable in regards to completeness and accuracy of the application information submitted by businesses, but with significant limitations as to the reliability of data regarding the review process, including results of the review process, comments, and responses and/or notification letters issued to businesses. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings and conclusions as noted in Appendix A.

As shown in the table, 32 of the 148, or 21 percent, of the applications were not issued a response from DCED for more than a week from the date that the businesses submitted their

⁵⁴ DCED management provided us with the Comments field and copies of some of the notification letters for the 150 applications selected for testing. From this information, we were able to determine the initial notification date for all but two of the applications. For the remaining two applications, dated notification letters were not provided to the audit team nor did the comments provided include the date necessary to perform the analysis.

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application, and for four applications it was more than three weeks. Although we understand that DCED faced significant challenges in implementing the waiver program in a limited time period, we also understand the frustration expressed by the business community regarding the lack of timely responses, particularly in light of potentially life altering impact caused by forced business closures. While there was no criteria or precedent for operating in such a pandemic, setting timeframes is critically important for DCED to issue a response as promptly as possible within those established timeframes which would assist businesses with expectations and planning for their operations.

The table also indicates that it generally took longer for DCED to complete its initial review when the second database was used. This additional time to initially process applications may have been the result of the following:

- The implementation of the QC process that occurred around March 24, 2020. This was an extra level of review that would have occurred prior to issuing the initial decision for applications received later in the program and, therefore, could have added additional processing time.
- The second database included a function to categorize applications based on a search of keywords. If a keyword was found in an application, the application would be placed in a high priority category.⁵⁵ If none of the keywords were found during the search, then the application was assigned to the lower priority category. This may have delayed the processing of certain applications.

Without establishing a timeframe for processing applications, risk increased that DCED may not have made critical decisions and responded timely to the businesses trying to operate under very difficult situations, which was evidenced by our results in certain cases.

In conclusion, we understand that the need for the waiver program was the result of an unprecedented worldwide pandemic and that DCED was tasked with developing and implementing the program within a very short time period. Additionally, it is reasonable that DCED needed to adjust the program and its processes when weaknesses were identified or improvements became evident. We point out these deficiencies to ensure improved accountability and transparency in the event it is necessary to implement another waiver program.

⁵⁵ The categories DCED considered a higher priority were life-sustaining industries related to medical, food and agriculture, emergency services, defense, water, essential communication, chemical manufacturing, essential transportation, and energy and nuclear facilities.

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Recommendations for Finding 3

We recommend that in the event this waiver program (or similar program) is ever utilized again, DCED management, in conjunction with the Governor's Office:

1. Ensure that the waiver application document includes detailed instructions regarding the amount and type of information necessary to process the application and a section for the applicant to attest to the accuracy of the information provided on the application.
2. Ensure that the database information cannot be overwritten.
3. Ensure that the database maintains a record of each step of the review process including, but not limited to, the following:
 - a. Who performed the initial and any subsequent reviews of the applications.
 - b. The justification for the decisions made on applications, including initial and subsequent decisions, if appropriate.
 - c. The dates that each step in the process occurred.
4. Ensure that a quality control team or supervisory review process is established at the inception of the program and continually reviewed for effectiveness throughout the process.
5. Maintain copies of all correspondence issued to applicants through a documented record retention system.
6. Establish guidance on the timeframe for reviewers to process applications and provide a response to applicants.
7. Develop a monitoring tool for evaluating the timeliness of processing applications and to ensure that all applications are processed.

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Finding 4 – Questionable decisions by DCED for certain waiver requests potentially resulted in detrimental effects for businesses and an unnecessarily increased risk to public health.

As previously described in this report, the Pennsylvania Department of Community and Economic Development (DCED) implemented the business waiver request program (waiver program) “on the fly”, without being able to thoroughly think through and properly plan the entirety of the program design and implementation. These circumstances brought challenges and the need for changes to be made as DCED was operating the program. It further prevented DCED from developing typical policies and written procedures and formal training for employees (including the reviewers, who processed the applications, or the customer service team, who staffed the call center) to use, many of which were from the Governor’s Office, different Commonwealth agencies, and other areas within DCED.⁵⁶

DCED management, however, stated that the continually evolving *Pennsylvania Industry Operation Guidance* (IOG) and *Life Sustaining Business Frequently Asked Questions* (FAQ) served as formal written policies and procedures for the waiver program, which likely caused challenges for reviewers determining whether businesses could continue to operate and call center staff providing consistent guidance to businesses. Further, these documents did not contain information regarding required procedures and management controls, such as documenting decision-making justifications and reviewing and approving decisions made for the waiver applications. In addition, rather than formal training, daily online conversations, Skype calls, and conventional conference calls were utilized to allow the group of reviewers to compare notes and experiences in dealing with common requests.

With the above understanding and concerns described within Findings 1, 2, and 3, the focus of this finding is to assess if waivers were properly granted or denied based on testing a selection of applications. Note that we discuss our analysis regarding whether responses were consistent within selected industries in *Finding 5*.

The process for selecting the 150 waiver applications we reviewed.

DCED management provided a data file that included the information submitted with the 42,380 waiver applications, as well as the available documentation of the review work performed to process the applications, with the exception of a comments field that could be used by reviewers

⁵⁶ DCED management stated that those reviewing the waiver applications consisted of as many as 63 individuals. Details regarding the call center are described in the *Introduction and Background*.

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to make notes.⁵⁷ Management did not provide the comments field for all 42,380 waiver applications because DCED stated that the comments potentially contained privileged information, which would take extensive time to review and redact, if necessary, before providing the information to us. We, therefore, did not have the comments available when judgmentally selecting the 150 applications for review.

It is important to keep in mind that the information regarding the work performed to process the applications was limited as described in detail in *Finding 3*. Specifically, the database systems used to process the applications did not retain information on all of the steps that occurred during the review process. Instead, it only retained the information applicable to the last step performed unless a reviewer manually documented decisions and the dates that they occurred in the comments field. Additionally, DCED did not require reviewers to document any justification for granting or denying waivers.

As a result of the limited information retained in the database and DCED's refusal to provide comments within the data file they provided, we could not identify which applications were issued a change to their initial responses (e.g., YES – waiver granted to NO – waiver denied) during the waiver program. Therefore, we requested that DCED management provide us with a list of the applications from businesses who were issued a change to their initial response.

Accordingly, DCED management performed a review of the database, including what was posted to the comments field. Based on this review, DCED provided a list of 443 applications from businesses who were issued a change to their initial responses from YES to NO, NO to YES, Not Required (NR) to NO, and NO to NR.⁵⁸ DCED management acknowledged, however, that due to technological limitations, there may be more applications whose responses were changed that were not included on the list. As a result, we may not have been provided with a complete population of businesses that received a change to its responses from DCED.

⁵⁷ As discussed in a later section of this finding, DCED did provide us with the comments field for our selection of 150 applications but redacted a portion of the comments for one of the applications. See *Introduction and Background* for details regarding the 42,380 waiver applications in the data file provided by DCED. We determined that the reliability of this data that was provided is sufficiently reliable in regards to completeness and accuracy of the application information submitted by businesses, but with significant limitations as to the reliability of data regarding the review process, including results of the review process, comments for the 150 applications selected for testing, and responses and/or notification letters issued to businesses. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings and conclusions as noted in *Appendix A*.

⁵⁸ See *Introduction and Background* for a description of response types (YES, NO, and NR). DCED management also provided us with a list of an additional 80 applications whose responses changed from YES to NR or NR to YES. We did not select applications to review from these lists, since these changes allowed the businesses to continue to operate, at least in some capacity.

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Using the list of 443 applications with response changes, we judgmentally selected 114 applications for review.⁵⁹ Additionally, in order to do a comparison of responses within industries, discussed in *Finding 5*, we selected the following nine industries: (1) appliance sales/service; (2) notary; (3) pet services; (4) beauty salons; (5) massage; (6) gyms; (7) greenhouse/florist; (8) real estate; and (9) construction to perform analysis on the consistency of responses within each industry.⁶⁰ Our selection of 114 applications included 44 businesses within these nine industries. We judgmentally selected an additional 36 applications from the 42,380 data file provided by DCED from one of those nine industries to make up our selection of 150 applications.⁶¹ The following table shows the breakdown of the responses issued to the 150 applications as reported in the data file:

Response ^{a/}	Number of Applications That Were Issued A Response Change	Number of Additional Applications From Selected Industries	Total Number of Applications Selected for Review
YES	33	15	48
NO	54	6	60
Not Required (NR)	27	12	39
No response listed/Blank fields	0	3	3 ^{b/}
Total	114	36	150 ^{c/}

^{a/} - See *Introduction and Background* for a description of response types (YES, NO, and NR).

^{b/} - Instead of a response, the business was issued a construction notification letter outlining what construction-related operations were permissible; however, the application was not requesting to perform construction-type operations.

^{c/} - To assess reliability of the information provided by DCED in the data file for these selected applications, we sent confirmation emails to the 157 individuals that submitted the applications for these 150 respective businesses. (Some businesses had two applications submitted on its behalf that came from different individuals.) We requested confirmation of the accuracy of the application information and final responses and notification letters issued to the businesses listed in the data file provided to us from DCED. We did not receive a response from 57, however, the remaining 100 individuals confirmed the accuracy of the application information. One individual noted a difference in the number of employees reported, which we determined to not be a significant issue. One responded that they were unsure of the accuracy. Eight individuals described issues with the responses issued by DCED some of which are described in a later section of this finding.

Source: This table was compiled by the staff of the Department of the Auditor General from data received from the Department of Community and Economic Development. We determined that the reliability of this

⁵⁹ Based on the review of information provided by DCED, we determined that for 9 of the 114 applications, the change in response to the application occurred prior to DCED issuing the business the initial notification; therefore, those businesses were only issued one response to that application.

⁶⁰ The nine industries were selected for review based upon the general knowledge that businesses within these industries were generally not permitted to continue to operate during the business closure orders; however, we found through a review of responses in the data file provided by DCED businesses within these industries that they were granted a waiver to continue operations.

⁶¹ Of the 150 applications, 80 were within one of the nine industries that we analyzed for initial response consistency in *Finding 5*.

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data is sufficiently reliable in regards to completeness and accuracy of the application information submitted by businesses, but with significant limitations as to the reliability of data regarding the review process, including results of the review process, comments, and responses and/or notification letters issued to businesses. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings and conclusions as noted in Appendix A.

Although DCED did not provide the comments field data for the 42,380 applications within the data file as previously noted, DCED did provide us with the comments field for our selection of 150 applications.⁶² Based on our review of the information provided by DCED in the data file of waiver applications and decisions made for our selection of 150 applications, along with our review of the notification letters issued, and correspondence to the Governor's Office and DCED from businesses, lobbyists, and legislators, we grouped our results into the following three areas, which are further described in the sections that follow:

- Results of our testing of 150 waiver applications.
- Unclear language regarding application decisions included in notification letters sent to businesses.
- Effects correspondence sent to the Governor's Office and/or DCED had on responses to waiver applications.

We also found responses to businesses that do not appear to be consistent with other businesses within the same industry, which we address in detail in *Finding 5*.

Results of our testing of 150 waiver applications.

Our review of the 150 applications determined that the complexity and frequency of the updates to the IOG and FAQs, as discussed in *Finding 2*, along with the application and system database deficiencies addressed in detail in *Finding 3*, created subjectivity within the waiver program and challenges for its reviewers. Additionally, applicants could include as much or as little information as they wanted when answering the general questions included on the application, which may have caused challenges for the reviewers who heavily depended on the amount and accuracy of information. This includes the accuracy and specific language provided by applicants which was needed by reviewers to make the proper decision to grant or deny waivers. We also found during our review of the application data file, and confirmed by DCED management, that many businesses submitted multiple applications that required individual evaluation. This added work for reviewers and, therefore, it slowed down the process.

These challenges for reviewers may have contributed to why we found many businesses that either were issued an inappropriate response, were issued a response that we believe to be questionable based on information provided in the application and applicable waiver program

⁶² DCED redacted a portion of the Comments for one of the 150 applications.

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guidance, or were not issued a response. In fact, we found only 31 of the 150 applications, or approximately 20 percent, that we could definitively agree with all of the responses issued by DCED. For the remaining 119 applications, or nearly 80 percent, we either disagreed with the responses issued or questioned the responses issued to some degree. The following summarizes the results of our review performed for the responses issued to the 150 businesses, which we address in detail in the sections that follow:

- Final responses issued to 103 businesses appeared reasonable.
- Responses issued to 45 businesses appeared questionable.
- Responses not issued to 2 businesses.

Final responses issued to 103 businesses appeared reasonable

Based on our review of the 150 applications, we found that the final responses issued to the businesses that submitted 103 of these applications appeared reasonable. Of these 103 applications we found the following:

- All the responses issued to businesses related to 31 applications appeared reasonable. Of these 31, only one response was issued to 11 businesses, and both an initial response and updated response was issued to the remaining 20 businesses. For the 20 applications issued changed responses, it appears, and in some cases was confirmed by DCED management, that updated responses were issued due to either a change in the guidance occurring after the initial response was issued or additional information was provided by the business.
- Although we questioned the initial responses issued to businesses related to 72 applications, we found that the updated final responses issued to these businesses appeared reasonable. DCED management stated that changes to these responses occurred for a variety of reasons, including new interpretations of existing guidance based on the best information available at the time and their efforts toward continuous improvement of the program. The need for changes to the responses supports the previously described challenges that reviewers faced during the application review process. The explanation for why responses were initially issued was, however, not documented. We were therefore unable to determine the basis for issuing these initial responses.

We took issue with the initial responses issued for the 72 applications which later were issued corrected responses and found that the questionable responses had varied effects on the businesses. For instance, businesses that were issued a NO response that later changed to a NR or YES were initially notified that they were unable to continue with operations when they may have been able to continue with at least a portion of their operations. Conversely, some businesses may have been permitted to operate for a period of time when they should have

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remained closed. The following presents three examples for which we consider the **initial** response to application to be questionable:

Example 1: A tobacco store appeared to have initially been issued a YES response because it indicated on its application that, in addition to its primary products, it also sold food. Forty-five days later, this application was reviewed again and the response was changed to NO. DCED management stated that although a business may sell food items, it did not constitute a grocery store, which were permitted to operate, and, therefore, the response was changed to NO.

Example 2: A massage business was issued a YES response on April 16, 2020, that was changed to NO on May 21, 2020. Correspondence provided to us by DCED indicated that this change was made two days after DCED received an email from another business in the massage industry complaining that this business was allowed to operate. DCED management stated that massage therapy was always considered non-life-sustaining; however, reviewers were permitted to take into consideration elements such as service to hospitals and other critical-care facilities and whether the service itself was medically necessary. Therefore, it is likely that this business was issued an initial response of YES due to language in the application referencing the services the business provides to health care workers.

Example 3: A business was issued a response of NO that was later changed to YES. According to DCED management, the response change was issued because after further review, the reviewer determined that the business was part of the supply chain for medical and defense industries. We found, however, that language referencing the business' support of these industries was included in the application when it was initially processed and was issued the NO response. The timing of both the initial review and the later change to a YES response, which we agree with, occurred after additional correspondence was sent to DCED noting that the business supported life-sustaining operations. Correspondence sent to the Governor's Office and DCED on behalf of businesses and the impact that it may have had on the timeliness of applications being reviewed and a corrected response issued is described in a later section in this finding.

Responses issued to 45 businesses appeared questionable

Based on our review of the 150 applications, we found responses to the businesses that submitted 45 of these applications to be questionable. We corresponded with DCED as to our concerns related to the decisions made regarding these applications. In response, DCED generally agreed that a different response for 11 of these applications would have been more appropriate; however, for the remaining 34 applications, DCED either questioned the legitimacy of our concerns regarding the responses provided to the businesses or did not comment.

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The following describes the type of incorrect responses that were issued to the 11 businesses generally agreed to by DCED management:

- 4 businesses were issued YES responses that should have been NO.
- 2 businesses were issued NO responses that should have been NR responses.
- 2 businesses were issued an initial response of NR that were later changed inappropriately to NO.
- 3 businesses did not have any decision listed in the Response column in the data file we received from DCED. The businesses instead were issued construction notifications; however, they were not requesting to perform construction-related services.

The results of these decision errors by reviewers had real-life negative consequences to businesses that should have been able to operate but instead were notified that they had to close.⁶³ Conversely, other businesses were incorrectly notified that they could continue with their operations providing non-life-sustaining products or services, which in turn potentially caused unnecessary risk to public health. Finally, some businesses never received responses as to whether they were able to continue with their business operations. DCED management stated that the software used for keyword searches may have erroneously identified these businesses to send a construction notification.

With regard to the remaining 34 applications that DCED management either questioned our concerns with the responses provided to the businesses or did not comment, we believe that the responses appear questionable based upon: (1) our understanding and interpretation of the applicable guidance; (2) information included in the application that did not contain enough support for the response; or (3) the inclusion in the application of requests to provide multiple types of products or services, not all of which were considered to be life-sustaining according to applicable guidance.

The following describes three examples of the type of questionable responses that were issued to the remaining 34 businesses:

Example 1: A massage business appears to have been issued a NR response due to its application indicating that it was offering services to health care staff and for pain management issues; however, it did not indicate that it would limit its services to only those individuals.⁶⁴

⁶³ DCED management stated that the NO response issued to businesses only applied to the specific operations listed in their waiver application and was not intended to preclude the business from performing any other work that otherwise was allowed by the business closure orders. We further discuss unclear language regarding application decisions included in notification letters sent to businesses later in this finding.

⁶⁴ The IOG dated March 19, 2020, contains language at the top that notes that in extenuating circumstances, special exemptions will be granted to businesses that are supplying or servicing health care providers. Therefore, an

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Example 2: A greenhouse business whose response changed from NR to NO had requested to fill phone orders through either pick up or delivery to the customer. Pick up by customers was not permitted, however, delivery to customers was permitted. Rather than clarify in the initial NR response that only delivery of items was allowable, DCED changed the response to NO and likely caused frustration and confusion to the business as to what they were permitted to do.

Example 3: One business response changed from NO to NR. The NO response appeared reasonable, as the business name and its website appears to indicate that it is a picture frame shop. DCED management stated that the response was changed to NR because the application listed woodworking, which was allowable according to the IOG. In this case, however, it is questionable as to the primary operation of the business.

The responses and corrections to responses that we found to be questionable potentially had varied effects on those businesses. In many cases, businesses that were issued a corrected NO response may have continued with portions of their operations that were not allowable. This may have occurred due to various reasons. For example, the business may not have received the corrected NO response. We contacted the applicants that submitted the applications for the 150 businesses we selected for testing and three businesses responded that they received the initial response (which was either a YES or NR) but did not receive the corrected NO response.⁶⁵

Another business responded that they received both the initial YES response and corrected NO response; however, they dismissed the NO response thinking it was an error because it came in the form of an email from DCED. The YES response, however, was in a letter with the Governor's Office letterhead and was signed by the Governor and the then-Secretary of Health. As further described in the next section of this finding, the difference in the format of a YES compared to a NO response notification was a possible cause of confusion to businesses. Regardless, as a result of businesses that were not providing life-sustaining products or services being issued either a YES or NR response that allowed them to continue with operations, individuals were put at an unnecessary risk of exposure during a time when public health and safety was a priority.

As previously noted, the review of applications was a subjective process. We acknowledge that conducting our review of applications and responses at a later date is from a different perspective than when the applications were being initially processed and reviewed during the height of the pandemic and business closure orders. We have the benefit of hindsight as to what transpired during the waiver program and of all of the changes to the applicable guidance provided to the

application that included words such as "health care providers," whether or not the description was accurate, may have been issued a favorable response from reviewers.

⁶⁵ See further information regarding confirmation emails sent to businesses explained in Tickmark ^{c/} in the table earlier in this finding.

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reviewers and the quality control team (QC) that made decisions on the applications during the waiver program. The information on the waiver application and applicable guidance that we reviewed during our audit procedures however was the same information that was initially viewed by the reviewers.

Responses not issued to two businesses

For two business, although there is a response indicated for each application in the dedicated response field in the data file provided by DCED (one a YES and the other a NO), there is no date listed in the notification field.⁶⁶ DCED management stated that due to the lack of a date in the notification field, it appears that the businesses did not receive a response. These businesses, therefore, were left with no answer from DCED as to whether they could continue with their operations. An additional, potentially detrimental, effect was that the business with the YES response was requesting to produce personal protective equipment that was in short supply and vitally important during the pandemic.

Unclear language regarding application decisions included in notification letters sent to businesses.

As previously mentioned in one example above, the language included in the waiver decision responses (YES, NO, or NR) emailed to businesses by DCED lacked clarity and could have led to confusion for businesses as to what, if any, business operations they could continue to perform.

For example, businesses that received a NR response might have considered this to be approval to continue with full, normal operations. The language in the NR letter stated that based on the information submitted in the application, it appeared that the business was not required to close that specific area of operations already considered to be life-sustaining as per the guidelines. The specific areas of operation considered to be life-sustaining, however, were not listed in the NR response to make clear to the business what portions of the operations could continue.

According to DCED management, the NR response meant that businesses could continue with only the portions of the business that met the guidelines. It is doubtful however, that businesses would know which specific sections to which the notification was referring. It is also questionable as to whether the businesses that were aware of which specific areas of their operations were considered life-sustaining abided by the instructions to only operate those

⁶⁶ These two businesses differ from three businesses previously discussed that were only issued construction notifications. The three businesses had no response decisions listed in the data file, while these two businesses, however, had responses listed in the data file but no notification dates, indicating that the responses listed were not actually sent to the businesses.

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portions of their business. Additionally, similar businesses that did not offer the same life-sustaining operations and were instructed to close may have been confused and questioned why other businesses remained open.⁶⁷ The appearance of inconsistency within industries is further described in detail in *Finding 5*.

Regarding NO responses issued to businesses, according to DCED management, this response only prohibited the specific work described on its application. The response did not preclude the business from performing any other work that otherwise was allowed by the business closure orders. Although that may have been DCED's intent when issuing a NO response, the email notifying an applicant of a NO response contained the following language:

In response to your request for an exemption from the applicability of the COVID-19 Orders... it has been determined that the business operations identified above must remain closed.

Based on the above language, it is understandable that the businesses may have interpreted the language to mean that they needed to close all operations rather than DCED's intention that the NO response did not preclude the business from performing other types of operations permitted under the business closure orders. Similarly, regarding YES responses issued to businesses, although language in the response letter stated that, ". . . to the extent described in the business' application, the business could continue to operate," businesses could have easily misinterpreted or chosen to continue with full operations.

We found DCED staff might have also been aware of this possible lack of clarity and related confusion based on their internal DCED waiver program correspondence. For example, during our review of such internal DCED correspondence, we noted that one of the emails between the review team and DCED management language stated:

Keep in mind, the waiver letter as it is in its current form has language that says your waiver pertains only to that part of your business operation which is life-sustaining. So hopefully the interpretation is folks read that and realize the cosmetic might need to wait.

This comment may have been specific to one application related to cosmetic construction-related work as opposed to structural work, but the sentiment regarding the language in the standard notification letter seems to indicate that DCED was aware that businesses may interpret the language differently than what was intended; however, language included on the response notifications to businesses were not edited to alleviate this concern.

⁶⁷ For example, while distilleries that converted their operations to produce and sell hand sanitizer were granted waivers to sell hand sanitizer, other distilleries that did not convert their operations were not permitted to remain open.

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We understand the enormity of DCED's task to implement the waiver program; however, since it had a major impact on the livelihoods of Commonwealth businesses, it is vital that DCED ensures clarity of their responses to reduce confusion and frustration among businesses for any other future waiver programs.

Effects correspondence sent to the Governor's Office and/or DCED had on responses to waiver applications.

According to DCED management, there was no official appeal process implemented for businesses. We found, however, an avenue utilized by businesses to question the waiver decisions received from DCED. Specifically, either the business or an outside party on the business' behalf would contact a staff member within the Governor's Office and/or DCED. DCED management confirmed that they were contacted by individuals outside of the businesses that included both lobbyists and the Pennsylvania General Assembly (legislators).

As part of our audit procedures, we requested DCED provide us with all of the written correspondence received by the Governor's Office, the Department of Health, and DCED from legislators and lobbyists regarding businesses that applied for a waiver. We reviewed 574 pages of correspondence received from DCED.⁶⁸ The correspondence included 159 emails representing approximately 153 businesses and 7 text messages regarding 4 businesses.⁶⁹

Fourteen of the 153 businesses were part of the previously discussed 150 business applications that we selected for our audit review. We reviewed the correspondence regarding those 14 businesses to determine the content of the request in the correspondence. We found the correspondence were general requests that the business application be reviewed and considered for a waiver. Some correspondence provided additional information not included on the initial application submitted. It appears this information was added to support why a business that had already received a NO response was life-sustaining, along with a request that the application be reviewed again.

⁶⁸ The completeness and content of all correspondence provided by DCED management is of undetermined reliability. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings and conclusions as noted in *Appendix A*.

⁶⁹ Multiple emails referenced the same business name; however, we were unable to determine if they were referring to the same business. To be conservative, for reporting purposes, we counted those with the same name as being one business. Additionally, some of the emails pertained to industries (i.e., construction) as a whole rather than for a specific business. Regarding texts, two referred to the construction industry in general and one referred to a business already included in the email count of 153 businesses.

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We also compared the dates of correspondence to the Governor's Office or DCED to the dates of the responses issued by DCED to businesses.⁷⁰ We found that the information in the emails may have been available and possibly utilized when making decisions on waiver applications for 13 of the 14 businesses.⁷¹

As the result of the emails potentially having an impact on 13 of the waiver application decisions, we performed additional audit procedures to determine if we agreed with the responses sent to the businesses or whether it appeared that the correspondence may have influenced the reviewer to make a questionable decision. We found the final responses issued to each of the 13 businesses appeared to be reasonable based upon the information provided in the applications, correspondence, and applicable guidance.⁷² Although correspondence does not appear to have had an undue influence on the type of response issued to businesses, it is possible that applications may have been evaluated and a response or corrected response issued sooner than they would have been through the regular application review process performed by QC.⁷³

In addition to the previously discussed 14 businesses, there were 48 emails for 64 businesses that were also dated prior to the date that DCED issued a response to the businesses.⁷⁴ We also performed audit procedures related to these 64 businesses and determined similar to the 14 businesses we reviewed above, the responses issued to the businesses appeared to be reasonable based upon the information provided in the waiver applications and the emails. The emails and texts for the remaining 79 businesses were either dated after DCED issued its final response to the business, and therefore would not have had an effect on response decisions, did not include a date, referred to a business not listed in the waiver application data file received from DCED, or no business name was included in the email or text.

⁷⁰ We acknowledge that we are only able to determine the date the email or text was sent and not when or if it was read by reviewers or played a part in the decision-making process.

⁷¹ Emails for seven of the businesses were dated prior to both the initial and corrected response notification dates; six emails were dated after the initial response notification date but prior to the corrected response; and emails regarding one business were dated after both the initial and corrected response notification dates.

⁷² Each of the 14 businesses were issued an initial and corrected response from DCED. The results from our review of the initial responses determined that six of the initial responses appeared reasonable but found the remaining eight initial responses to be questionable. We did, however, agree with all 14 of the corrected responses issued.

⁷³ The six businesses whose emails were dated after the initial response notification date but prior to the corrected response (all of which changed from NO to either YES or NR), the corrected responses were within 1 to 4 days of the correspondence for 4 of the 6 businesses.

⁷⁴ Some emails listed multiple business names; for example, one email included the names of three different businesses.

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Recommendations for Finding 4

We recommend that DCED management, in conjunction with the Governor's Office, make the following improvements in the event this type of business waiver program is ever needed again:

1. Ensure that the decisions for all waiver applications are reviewed and approved by a second reviewer (e.g., Quality Control) prior to issuing responses to businesses.
2. Develop well-defined evaluation procedures for Quality Control to ensure that all businesses which have made application for waivers or sent inquiries to DCED receive an accurate and clear response.
3. Develop and implement clear and concise procedures for a monitoring process to ensure that all responses are issued to businesses for all waiver applications submitted.
4. Ensure that the language included in the responses to waiver requests is clear as to what specific portion(s) of the business' operations are permitted to operate and which are required to close.
5. If a keyword search is used to identify applications that should receive a general industry notification letter, implement a review of those applications by a second reviewer (e.g., Quality Control) to confirm that based on the nature of the request in the waiver application, the industry notification letter is appropriate.
6. To assist in improving upon issues discussed in the findings in this report, develop a planning tool for any future business closure orders that includes the guidance reviewers should use when evaluating applications; documents necessary steps of the review process; and a requirement to retain support for decisions made.

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Finding 5 – Responses to businesses were inconsistent among businesses within the same industry.

In addition to the results discussed in *Finding 4* regarding the reasonableness of waiver request applications that were granted or denied, we also performed procedures to evaluate whether **initial** waiver application decisions were consistent among businesses within particular industries.⁷⁵ We decided to limit our evaluation to the first response provided to the applicant since corrections to the responses, where applicable, were generally not issued until early May 2020, or at least a month after the applications were accepted. We selected nine industries to review that were generally considered non-life-sustaining and, therefore, not permitted to continue physical operations. These industries included appliance sales/service, gyms, beauty salons, massage, notary, pet services, real estate, construction, and greenhouse/florist-related businesses. We determined that 80 of the 150 applications selected for testing as described in *Finding 4* were within one of these nine industries, and the results in this finding are limited to those 80 applications.

⁷⁵ Decisions made on applications included the following response notifications issued to businesses: YES, NO, Not Required (NR). See *Introduction and Background* for a description of response types.

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The following table summarizes the 80 businesses within the nine industries and results of our review for consistency of **initial** responses issued to businesses within each of the industries:⁷⁶

Industry	Number of Applications Within the Industry	Initial Response Appeared Consistent with Responses in the Same Industry	Initial Response Did Not Appear Consistent With Responses in the Same Industry	Industry Response Consistency Analysis Was Not Performed ^{a/}	Business Did Not Receive a Response ^{b/}
Appliance Sales/Service	7	0	6	0	1
Gyms	6	0	5	0	1
Beauty salons	6	1	0	4	1
Massage	5	0	5	0	0
Notary	6	0	6	0	0
Pet services	9	0	9	0	0
Real estate	10	1	5	3	1
Construction	9	6	3	0	0
Greenhouse/Florist ^{c/}	22	7	15	0	0
Total	80	15	54	7	4

^{a/} - Operations requested on the application were outside of the typical operations of the industry. For example, a salon requesting to only sell hand sanitizer, and a real estate business requesting to provide management and maintenance support services to properties. Although we analyzed the reasonableness of decisions made on the applications, we did not analyze consistency of responses to other businesses within the same industry.

^{b/} - Response analysis could not be performed as a result of DCED not issuing a response to the business or issuing a construction notification instead of a response. *Finding 4* discusses these issues.

^{c/} - Greenhouse industry included businesses with names and business descriptions that included greenhouse, nursery, garden center, and landscaping. Seventeen of these businesses were greenhouse-related and five were florist-type businesses.

As noted in the above table, of the 80 applications we attempted to evaluate for consistency within the respective industry, we were only able to draw conclusions on 69 applications. Additionally, after evaluating the nine applications related to the construction industry, we found that they had varied responses due to the different types of projects included in the businesses' waiver applications. In other words, the decisions DCED issued to these applicants were dependent in part upon whether the request was for a project related to a life-sustaining industry, such as a medical building or energy-related project. As a result, we decided to exclude the

⁷⁶ We considered inconsistent responses to be, for example, those businesses receiving a YES or NR which allowed them to continue with at least some portion of their operations in industries that as a whole were generally determined to be non-life-sustaining and, therefore, not permitted to operate. Applicable guidance includes the *Pennsylvania Industry Operation Guidance* (IOG) and *Life Sustaining Business Frequently Asked Questions* (FAQ), both of which are discussed in detail in *Finding 1* and *Finding 2*.

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results of our construction industry application review from our results, which are categorized into the four areas summarized below.

1. Waiver applications processed early in the waiver program were reviewed differently than those processed later in the waiver program.

As previously discussed in *Finding 4*, DCED management stated that the individuals performing the initial review of applications (reviewers) were permitted to take into consideration elements such as service to the health care industry when making a decision on a waiver. Reviewers may have therefore considered certain language or words in the applications as sufficient support for approving a waiver early in the process. We found applications within the pet and massage industries that appear to have been approved based upon language in the application indicating that they were providing services to health care professionals. DCED management stated that these types of claims by businesses became more prevalent over time and reviewers, therefore, became skeptical regarding this type of language when approving such waivers as the program progressed.

Additionally, the reviewers processing applications later in the program had additional guidance and a better understanding of the definition of what was and was not “life-sustaining.” Still, overall, and in spite of the gained skepticism and additional knowledge, the waiver review process appears to have been very subjective and heavily dependent on wording used in the individual applications. The change in the way language in applications was considered over the course of the waiver review process appears to have contributed to the inconsistency in responses.

2. Including key words in the application often resulted in favorable, but questionable, responses.

As noted in *Finding 3*, business waiver application questions did not provide specific direction to businesses on what information to provide in their applications. It was therefore up to the individual completing the application to determine how much or how little information to include when trying to explain why their business should be considered eligible for a waiver to the business closure order. As a result, the amount of information and justifications provided by businesses varied widely between applications. Some businesses included what would become, as described in the below examples, key information that reviewers were looking for in order to make the decision to issue a YES or NR response to a business in an industry in which most businesses were required to close. Other businesses within the same industry performing exactly the same operations may have received a NO response because they did not include the key words or phrases that other businesses receiving YES or NR responses included in their applications. The following are examples of information provided by businesses that appear to have resulted in the initial approval of their waiver applications or the response of an NR:

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- Real estate and gym-related applications included a statement that they would limit the number of people in the office/building.
- Pet grooming applications included language that in addition to providing pet grooming services, the business sold pet food. Pet supply stores were permitted to operate per the *Pennsylvania Industry Operation Guidance* (IOG).
- Pet grooming applications included a statement that they would have no personal interaction with customers.
- A notary business application stated that it was only providing online messenger services (permitted per the IOG) to support transportation activities (an industry deemed to be essential).
- A notary business application included language that not only requested to perform notary services for customers purchasing a car, but also included in its business description a reference to payroll services. DCED management stated that the application was issued a NR response, likely with the intent to allow only the processing of payroll since those services were otherwise permitted. It is reasonable to assume based on the lack of further clarification that a business might have interpreted the NR response as being able to perform all business operations, not just payroll services.
- Greenhouse business applications may have been approved due to included language regarding providing landscaping services, which was permitted, and selling plants to grow food. DCED did not indicate why the applications initially received a YES or NR but stated that corrections were made to change the responses to NO after a review of the applications found that these businesses indicated their operations included retail sales.
- Two gym applications indicated that their businesses wanted to only provide medical-related services to specific clients. When questioned, DCED management responded that since the businesses were not requesting the full gym to be open but only asking to provide medical-related services for patients, they received a YES response. This meant the gym could only offer the services provided in the justification. Depending on how the businesses chose to view the response, they may have operated at full service or even if they only provided the medical-related services requested in their applications, the general public would have seen that they were allowed to be open at a time when many other gyms were not allowed to operate.

The examples above illustrate the subjectivity of interpreting application language without questions targeted at soliciting key information in a uniform and unbiased manner. The use of certain words appears to have resulted in responses of YES or NR being issued to businesses in industries that generally were not permitted to continue operations.

3. Appearance of inconsistency within an industry due to how businesses stated they would deliver their product to customers.

The April 10, 2020 version of the *Life Sustaining Business Frequently Asked Questions* (FAQ) indicated that orders could continue to be fulfilled if delivered to the customer's

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home. DCED management stated that curbside pickup of non-life-sustaining items was not permitted, so for businesses that indicated they planned to offer curbside pickup of items, their applications were denied. For example, a florist indicated that they would be delivering their product to the customer and did not indicate curbside pickup as an option. This florist's application was therefore approved by DCED. This may appear to the public as an inconsistency within the industry that the business had been approved to continue operating when other businesses were instructed to close.⁷⁷

4. Inconsistent responses to businesses regarding retail sales versus repair of appliances.

The March 24, 2020 FAQ indicated that in-home emergency repairs were allowable but not in-person sales of appliances. Within the appliance industry, we found the following varying DCED responses to six of the applications that we determined to be inconsistent within the appliance industry:

- Two applications that appear to be primarily requesting to perform repairs received a NO response.
- Two applications that requested to perform appliance sales and service received either a YES or NR.
- One application that requested to sell appliances received a YES.
- One application that requested to sell appliances (and included a reference to the sale of appliances to local hospitals) received a NR response.

We found the consistency of the above responses questionable in terms of industry responses regarding what types of operations were permitted. DCED management stated that some of the above responses may have been issued prior to the clarification provided in the FAQ regarding retail sales versus repairs of products; however, none of the above responses were changed during any subsequent reviews performed of the applications. Although DCED management stated that NR responses only permitted allowable portions of operations and that a NO response did not prohibit businesses from performing allowable operations, these responses lacked clarity for the business applicants. They also resulted in businesses within the same industry observing similarly situated businesses receiving a NR or YES response, which presumably allowed them to continue the sales portion of their operations.

As described above, the **initial** responses to several applications were inconsistent within the industries reviewed as shown in the table and examples presented. The examples demonstrate the subjective review of language included in applications that resulted in inconsistent responses, or the appearance of inconsistent responses.

⁷⁷ We did not, as part of our audit procedures, confirm how businesses operated after receiving approval to continue to operate.

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We want to point out that many of these businesses received subsequent responses, generally in early May 2020, which in many cases helped to correct industry inconsistencies discussed above. This appears to be due to DCED, four days into the waiver program, establishing a quality control team (QC) who subsequently performed a review of applications that had previously been issued responses without any secondary review. These corrections, although necessary, demonstrated to the public that DCED made some initial decisions that were inaccurate and therefore inconsistent with similar businesses in the respective industries. This in turn caused frustration and distrust among members of the public in the decisions made by DCED related to the waiver program.

Recommendations for Finding 5

We recommend that DCED management, in conjunction with the Governor's Office, make the following improvements in the event this type of business waiver program is ever needed again:

1. Ensure that the review process includes a detailed evaluation of decisions made regarding waiver request applications for businesses within the same industries in order to ensure the consistency of responses.
2. Ensure that whenever there is a change in guidance, all applications previously processed for that industry are immediately and carefully reviewed to determine if a corrected response is necessary and, if so, send corrections to the businesses affected in a timely manner.

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Pennsylvania Department of Community and Economic Development's Response and Auditor's Conclusion

We provided copies of our draft audit findings and related recommendations to the Pennsylvania Department of Community and Economic Development (DCED) for its review. On the pages that follow, we included DCED's response in its entirety. Following DCED's response is our auditor's conclusion.

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Audit Response from the Pennsylvania Department of Community and Economic Development



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT

August 20, 2021

The Honorable Timothy L. DeFoor
Auditor General
Pennsylvania Department of the Auditor General
229 Finance Building
Harrisburg, Pennsylvania 17120-0018

Dear General DeFoor:

Thank you for the opportunity to review the draft performance audit report and for your thorough and considered assessment of the business waiver request program. We appreciate your acknowledgement that the extraordinary circumstances of the global COVID-19 pandemic led to the waiver program, the purpose of which was to provide Pennsylvania businesses with the opportunity to continue their life-sustaining operations during an unprecedented time. We also appreciate this opportunity to respond to the draft report, as well as your staff's professionalism throughout the entire audit process.

As a preliminary matter, we want to put the waiver program into further context for readers of the final report. On March 19, 2020, Governor Tom Wolf ordered all non-life-sustaining businesses in Pennsylvania to close their physical locations. Immediately following that order, the Administration released a list of life-sustaining business categories permitted to remain open. However, Governor Wolf also wanted to offer a way for those businesses to remain open that were not included on the initial list but were still an important part of the supply chain for health care, food, and other related industries.

As a result, the Department of Community and Economic Development (DCED) - an agency typically engaged in encouraging businesses to expand, promoting entrepreneurs, and attracting businesses to Pennsylvania - was tasked with working with the Governor's Office to quickly develop a process to determine businesses eligible for waivers from the closure order. Outside of an emergency situation, a task this huge would have involved months of development, information technology planning, and testing, along with many layers of review. However, in this case, the entire business waiver program had to be developed literally overnight.

The sheer volume of work required to establish, implement, and operate the waiver program cannot be overstated. Approximately 90 Commonwealth employees from multiple agencies, disciplines, and professional backgrounds were called upon to assist, many of whom worked around the clock to troubleshoot system issues or review waiver requests. This team began working from their home offices, kitchens, and living rooms in every corner of the Commonwealth often on new equipment that was handed to them as they left their offices on the day state offices were closed. They had to quickly learn how to work on software platforms that many of them had never used before. They applied

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constantly emerging external guidance, best practices from other states, and Commonwealth directives that were updated daily as the Commonwealth charted a path to assist the business community in emerging from the early days of this pandemic. They accomplished all of this while, at the same time, dealing with the effects of the pandemic in their own lives – guiding their children through a new world of online learning, caring for vulnerable family members, and struggling through some of the most uncertain times the world has ever faced. These dedicated employees truly redefined what it means to be public servants.

The waiver program began accepting requests on March 20, 2020. By the time the program closed on April 3, 2020, it had received a total of 42,380 waiver requests, an average of 2,800 requests per day. The requests represented the diversity of businesses and individuals in the Commonwealth and ranged from heartfelt – and often heart-wrenching – individual pleas from small business owners to keep their struggling businesses open, to requests from multinational corporate entities represented by legal counsel. This diversity presented a unique set of challenges for making consistent determinations as to which businesses could remain open because they were life-sustaining and which businesses, unfortunately, had to remain closed to protect public health.

Our detailed response to the draft audit report is set forth below. Although we might disagree with some aspects of the findings, we found all of the recommendations to be very constructive. While we all hope that there is no need for another business waiver program in the future, we certainly want to learn from prior experience in the event that a similar program ever becomes necessary again.

Audit Finding 1: Pennsylvania's business closure order was more restrictive than federal guidelines which resulted in more business closings.

The federal guidance regarding which businesses should be open or closed was advisory only, and identified only broad categories of businesses; no state was required to follow it, and it did not provide significant detail regarding implementation or application. Each state was faced with determining whether, to what extent, and how to implement the federal guidance, and Pennsylvania appropriately chose to develop and implement state-specific criteria. Although the business waiver program may not have been perfect, it allowed thousands of businesses to remain open to provide life-sustaining services.

With regard to the second recommendation in particular, while the waiver program was established quickly, it did not operate in a vacuum. During and after the period when the waiver program was in effect, DCED engaged in considerable and consistent outreach to various stakeholders to gather critical and timely information that would inform the operations of the program and the Administration's COVID-19 response in general. In addition, DCED also had staff working in the State Emergency Operations Center at the Pennsylvania Emergency Management Agency (PEMA) who were involved every day in conversations with relevant agencies, such as the Department of Health, Department of Labor and Industry, and the State Police, to understand the rapidly changing landscape of the pandemic and the specific needs of industry sectors related to the business closure order together with the need for waivers for certain businesses. DCED also participated in industry-specific calls with

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trusted partners hosted by PEMA to gather additional feedback. DCED's work with various industry groups led many of them to develop further guidance specific to their respective sectors and to encourage businesses within those sectors to request waivers.

Finally, as part of the waiver process, DCED staff held internal conference calls and conversations via the Microsoft Teams communication platform multiple times each day to discuss waiver requests that were particularly challenging and to collaborate on solutions.

Audit Finding 2: The guidance available to businesses and used by DCED to determine whether or not businesses are life-sustaining continued to evolve throughout the waiver program.

The guidance available to businesses and used by DCED to determine whether or not businesses were life-sustaining was updated throughout the waiver program as a process of continuous improvement based on new information learned about COVID-19 and its impacts.

With regard to the third recommendation, both the Life Sustaining Businesses List and the Frequently Asked Questions documents were featured prominently on multiple state government websites, including dced.pa.gov, pa.gov, and governor.pa.gov.

Audit Finding 3: Deficiencies related to the development of the waiver program resulted in a lack of accountability and transparency.

The priority of the waiver program was, by necessity, to provide timely and accurate responses to businesses that sought to remain open during the pandemic. Ensuring appropriate documentation was an important, albeit secondary, goal due to the urgent nature of the work involved.

With regard to the seventh recommendation, only 0.03 percent of valid requests were not processed out of the 42,380 waiver requests received during the intense two-week waiver request period. While the number of unprocessed requests is not statistically significant, every business deserved a response. DCED will continue to strive for a perfect response rate in any similar program in the future.

Audit Finding 4: Questionable decisions by DCED for certain waiver requests potentially resulted in detrimental effects for businesses and an unnecessarily increased risk to public health.

We are proud, but not surprised, that auditors found no waiver decisions that were made on the basis of bad faith by the team, outside pressure, or improprieties of any kind. Reasonable people may disagree on the outcome of certain requests for which there was not a clear-cut answer, but the public can be assured that every decision was made in a professional manner.

To that end, we want to correct the statement on page 45 of the draft report that DCED "generally agreed that a different response for 11 of [the 45 waiver requests in the audit sample out of 42,380 waiver requests in total] would have been more appropriate...." A more accurate statement of DCED's position on this issue is that, with the benefit of time to reconsider those waiver decisions a year later during this audit without the necessary urgency that existed during the operation of the waiver program, we acknowledge that different responses to several of those 11 requests may have been

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appropriate, but that does not mean that the original decisions were themselves incorrect at the time and under the conditions in which they were made. In any similar program in the future, DCED will continue to strive to ensure accuracy and consistency across its decisionmaking.

Although we were compelled to change the waiver status for a relatively small number of businesses, those decisions were also made objectively as new information became available. All of our work was intended to decrease the risk to public health and safety by allowing life-sustaining businesses to remain open. It is important to note that a “no” response to a waiver request was not an order from DCED for the business to remain closed. It was merely a response to the request for a waiver based on the specific information provided by the business; other aspects of the business that qualified as life-sustaining under state guidance did not require a favorable response to a waiver request to remain open. Similarly, a “yes” response to a waiver request was not a blanket permission to continue *all* operations of the business. It, too, was merely a response to the request for a waiver based on the specific information provided by the business; other aspects of the business that did not qualify as life-sustaining under state guidance or were not addressed in the waiver request were not permitted to remain open.

Audit Finding 5: Responses to businesses were inconsistent among businesses within the same industry.

To the extent that there may appear to have been inconsistencies in waiver decisions affecting businesses within the same industry, most apparent inconsistencies were based more on perception rather than reality. In most cases, they were due to differences in the specific information provided in the individual waiver requests, as well as the updated guidance throughout the process. We will continue to strive to eliminate inconsistencies in any similar program in the future.

Once again, thank you for the performance audit of the business waiver program and for the opportunity to include this letter in the final published report.

Sincerely,



Dennis M. Davin
Secretary

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Auditor's Conclusion to the Pennsylvania Department of Community and Economic Development's Response

Pennsylvania Department of Community and Economic Development (DCED) management stated that they might disagree with some aspects of the findings, however, they found all of the recommendations to be very constructive. Additionally, DCED wants to learn from this prior experience in the event that a similar program ever becomes necessary again. Although DCED management did not state that overall they were in agreement with the findings, management's response only indicates a few small areas of concern. We provide further clarifications and emphasis based on our evaluation of management's response to our findings and recommendations below. Note that in any instances where DCED refers to audit report page numbers in its response, these page numbers refer to a draft report and do not correspond to page numbers in this final report. Instead, please refer to finding and recommendation numbers along with the content referenced.

DCED indicated that it wanted to put the waiver program into further context for readers of the final report and provided background on the waiver program. We acknowledged in our report the short amount of time that DCED had to implement the waiver program and the challenges that it faced under the circumstances. We acknowledged in our report, as DCED stated in its response, that the federal guidance was advisory in nature and each state was responsible for identifying essential workers related to COVID-19. Regarding DCED's comment to the second recommendation in *Finding 1*, we did not suggest that they operated in a vacuum, nor that they did not perform any outreach to stakeholders. Our recommendation is that the Governor's Office re-evaluate its process for determination of life-sustaining and non-life-sustaining industry groups in consultation with other various stakeholders, based on what was learned during the waiver program, as to whether changes should be implemented to improve the process if needed again in the future.

Regarding DCED's comment to the third recommendation in *Finding 2* that the Life Sustaining Businesses List and the Frequently Asked Questions documents were featured prominently on multiple state government websites, our recommendation was not regarding a link or location of those documents. Instead, we are referring in our recommendation to the notes included in the various versions of the Pennsylvania Industry Operation Guidance, which referred to an additional source or document to utilize to determine whether a business was life-sustaining or not. We recommend that locations for these additionally referenced sources of information should be linked to the respective notes.

DCED management stated in its response regarding *Finding 3* that only 0.03 percent of valid requests were not processed out of the 42,380 waiver requests received and that every business deserved a response. Although we did not validate this number, we commend DCED's intention to strive for a better response rate in any similar program in the future. We agree, and reiterate

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the importance of DCED developing monitoring tools to ensure that all applications are processed so that all businesses are issued a response as to whether they can continue with their operations, especially given the effects on businesses and the livelihood of their workers. Additionally, we understand DCED's response for *Finding 4* regarding the benefit of hindsight and possibly making different decisions after-the-fact. While we understand why DCED states in its responses regarding a YES or NO response to a waiver request, the finding described what we believe to be unclear language in the notification letters sent to businesses. Specifically, the language regarding what, if any, business operations they could continue to perform. While the intentions of DCED were certainly clear in its desire to communicate approval or disapproval of a waiver application, that message was not always clear to the businesses receiving their responses. We recommend DCED ensure letters are clear and specific in this regard to benefit businesses and avoid potential confusion.

Regarding *Finding 5*, DCED commented in its response that most apparent inconsistencies were based more on perception than reality. We agree that some of the inconsistencies were based on perception due to certain businesses having distinct delivery versus pickup processes. For example, some businesses planned to deliver their products to customers directly which differed from other businesses within the same industry that only offered curbside pickup, which was not permitted. We, however, found other instances where DCED provided inconsistent responses to businesses within the same industry that were requesting to provide the same services in the same manner. We therefore continue to recommend that DCED perform a detailed evaluation of decisions made to ensure the consistency of response in the program if it is ever again needed in the future.

Overall, we believe that our recommendations, if properly implemented, will assist to improve this program, or any similarly situated program, if ever needed again in the future and, therefore, our recommendations remain as stated.

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Appendix A

Objectives, Scope, Methodology, and Data Reliability

The Department of the Auditor General (DAG) conducted this performance audit of the Department of Community and Economic Development (DCED), regarding the waiver request program, under the authority of Sections 402 and 403 of The Fiscal Code of the Pennsylvania Statutes.⁷⁸ We conducted this audit in accordance with applicable *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives.⁷⁹

Objectives

1. Evaluate the criteria used to deem a business as life-sustaining versus non-life-sustaining and compare the criteria with national guidelines. [See *Findings 1, 2*]
2. Evaluate the development of the waiver request program and DCED's process for reviewing businesses' requests, including the development of the waiver application, the criteria utilized, the processing time, and the guidance provided to businesses. [See *Findings 2, 3*]
3. Evaluate and determine whether waivers were granted or denied consistently and in a timely manner. [See *Findings 3, 4, 5*]

Scope

The audit period was from March 6, 2020, the date of the Governor's COVID-19 disaster emergency declaration, through June 5, 2020, the date the last Pennsylvania counties were moved into the "yellow" reopening phase, unless otherwise noted.⁸⁰

⁷⁸ 72 P.S. §§ 402 and 403.

⁷⁹ U.S. Government Accountability Office. *Government Auditing Standards*. 2018 Revision.

⁸⁰ The Governor's Office released guidance on the phased re-opening of businesses by region or county. As defined by the Governor's Office, the red phase had the sole purpose of minimizing the spread of COVID-19 through strict social distancing, non-life-sustaining business closures, school closures, and building safety protocols. The yellow phase meant some restrictions on work and social interaction would be eased while others, such as closures of schools, gyms, and other indoor recreation centers, hair and nail salons, as well as limitations around large gatherings would remain in place. The green phase eased most restrictions with the continued suspension of the stay at home and business closure orders to allow the economy to strategically reopen while continuing to prioritize public health. <https://www.governor.pa.gov/process-to-reopen-pennsylvania/> (accessed June 4, 2021).

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DCED is responsible for establishing and maintaining effective internal controls to provide reasonable assurance of compliance with applicable laws and regulations, contracts, grant agreements, and administrative policies and procedures. In conducting our audit, we obtained an understanding of DCED's internal controls, including information system controls.

Standards for Internal Control in the Federal Government (also known as and hereafter referred to as the Green Book), issued by the Comptroller General of the United States, provides a framework for management to establish and maintain an effective internal control system.⁸¹ We used the framework included in the Green Book when assessing DCED's internal control systems.

The Green Book's standards are organized into five components of internal control. In an effective system of internal control, these five components work together in an integrated manner to help an entity achieve its objectives. The five components contain 17 related principles, listed in the table below, which are the requirements an entity should follow in establishing an effective system of internal control.

We determined that all of the internal control components are significant to our audit objectives. The table below represents a summary of the level of our internal control assessment for effectiveness of design (D); implementation (I); or operating effectiveness (OE), that we performed for each principle for our three audit objectives with respect to DCED, along with a conclusion regarding whether issues were found with the principles and if those issues are included in a finding.⁸²

⁸¹ Even though the Green Book was written for the federal government, it explicitly states that it may also be adopted by state, local, and quasi-government entities, as well as not-for-profit organizations, as a framework for establishing and maintaining an effective internal control system. The Pennsylvania Governor's Office ***adopted these federal standards*** for all Commonwealth agencies within Management Directive 325.12 Amended, dated May 15, 2018. https://www.oa.pa.gov/Policies/md/Documents/325_12.pdf.

⁸² The Green Book, Sections OV3.05 and 3.06, states the following regarding the level of assessment of internal controls. Evaluating the design of internal control includes determining if controls individually and in combination with other controls are capable of achieving an objective and addressing related risks. Evaluating implementation includes determining if the control exists and if the entity has placed the control into operation. Evaluating operating effectiveness includes determining if controls were applied at relevant times during the audit period, the consistency with which they were applied, and by whom or by what means they were applied.

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Component		Principle	Level of Assessment	Objective	Conclusion
Control Environment	1	The oversight body and management should demonstrate a commitment to integrity and ethical values.	D	1, 2, 3	No issues found
	2	The oversight body should oversee the entity's internal control system.	D, I, OE	2, 3	See Findings 3, 4, 5
	3	Management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objectives.	D, I	2	See Finding 4
	4	Management should demonstrate a commitment to recruit, develop, and retain competent individuals.	D	2	No issues found
	5	Management should evaluate performance and hold individuals accountable for their internal control responsibilities.	D	3	No issues found
Risk Assessment	6	Management should define objectives clearly to enable the identification of risks and define risk tolerances.	D	2	See Finding 3
	7	Management should identify, analyze, and respond to risks related to achieving the defined objectives.	D, I, OE	2, 3	See Findings 3, 4
	8	Management should consider the potential for fraud when	D	3	No issues found

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Component		Principle	Level of Assessment	Objective	Conclusion
		identifying, analyzing, and responding to risks.			
	9	Management should identify, analyze, and respond to significant changes that could impact the internal control system.	D, I	2	No issues found
Control Activities	10	Management should design control activities to achieve objectives and respond to risks.	D, I, OE	2, 3	See Findings 3, 4
	11	Management should design the entity's information system and related control activities to achieve objectives and respond to risks.	D, I	2	See Finding 3
	12	Management should implement control activities through policies.	D	1, 2	See Findings 1, 2, 4
Information and Communication	13	Management should use quality information to achieve the entity's objectives.	D, I, OE	1, 2	See Findings 1, 2, 3
	14	Management should internally communicate the necessary quality information to achieve the entity's objectives.	D, I	1, 2	See Findings 1, 2, 4
	15	Management should externally communicate the necessary quality information to achieve the entity's objectives	D, I, OE	1, 2	See Findings 1, 2, 4
Monitoring	16	Management should establish and operate monitoring activities to monitor the internal	D, I, OE	2, 3	See Findings 3, 4, 5

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Component	Principle	Level of Assessment	Objective	Conclusion
	control system and evaluate results.			
	17 Management should remediate identified internal control deficiencies on a timely basis.	D, I, OE	2, 3	See Findings 4, 5

Government Auditing Standards also require that we consider information systems controls “...to obtain sufficient, appropriate evidence to support the audit findings and conclusions.”⁸³ This process further involves determining whether the data that supports the audit objectives is reliable. In addition, Publication GAO-20-283G, *Assessing Data Reliability*, provides guidance for evaluating data using various tests of sufficiency and appropriateness when the data are integral to the audit objective(s).⁸⁴ See our assessment in the *Data Reliability* section that follows.

Our procedures to assess the design, implementation, and/or operating effectiveness accordingly are discussed in the *Methodology* section that follows. Deficiencies in internal controls that we identified during the conduct of our audit and determined to be significant within the context of our audit objectives are summarized in the conclusion section below and described in detail within the respective audit findings in this report.

Conclusion for Objective 1:

While our assessment of management’s design of controls did not find issues related to Principle 1 regarding commitment to integrity and ethical values, we found issues regarding implementing control activities through policies and communicating information both internally and externally regarding the guidance related to the business waiver program. The Governor’s Office was responsible for developing the criteria used in Pennsylvania to deem a business as life-sustaining versus non-life-sustaining. This criteria was developed based on decisions made by the Governor’s response team and formalized in writing in guidance that was issued externally for use by Pennsylvania businesses and internally for use by commonwealth employees selected to review waiver applications submitted by businesses. Our audit procedures found, as described in detail in *Findings 1* and *2*, that Pennsylvania’s guidance was revised multiple times throughout the waiver program, which caused confusion for businesses and challenges for reviewers making decisions on waiver applications. Additionally, Pennsylvania guidance was more restrictive than federal guidelines.

⁸³ U.S. Government Accountability Office. *Government Auditing Standards*. 2018 Revision. Paragraph 8.59 through 8.67.

⁸⁴ U.S. Government Accountability Office. *Assessing Data Reliability*, December 2019.

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Conclusion for Objective 2:

Our assessment of management's design of controls did not find issues related to Principles 1, 4, and 9 regarding commitment to integrity and ethical values, recruiting and retaining competent individuals, and responding to changes impacting internal control. We determined however, that due to the short period of time in which the waiver request program was developed, there were challenges and the need for changes to be made during the waiver program which resulted in concerns related to the remaining principles applicable to Objective 2. Concerns included: (1) designing, documenting, and implementing control activities for the waiver process and the database utilized to process waiver request applications; (2) defining risk tolerances and responding to risks; (3) ensuring that quality, accurate information was obtained from businesses; (4) internally and externally communicating information regarding the waiver program; and (5) implementing procedures to document monitoring activities that occurred during the waiver process.

These issues are described in detail in *Findings 2* and *3* and specifically include the design of the waiver application, the database utilized to document and retain information regarding the waiver applications and reviews performed, justification for decisions made on applications, and approvals of decisions made for applications. Additionally, the guidance developed by the Governor's Office used by both businesses and the commonwealth employees reviewing waiver applications continued to evolve throughout the waiver process which caused confusion among businesses and may have affected the decisions made by those processing the waiver applications. DCED also did not establish a timeframe for processing applications and based on the design of the database used to process applications, we were unable to determine the timeliness of DCED processing and issuing a response to businesses for all applications submitted.

Conclusion for Objective 3:

Our assessment of management's design of controls did not find issues related to Principles 1, 5, and 8 regarding commitment to integrity and ethical values, evaluating performance of individuals and considering the potential for fraud when responding to risks. We determined, however, that due to the short period of time in which the waiver request program was developed, there was a need for changes to be made during the waiver program. This resulted in concerns related to the remaining principles applicable to Objective 3. Concerns included: (1) designing, documenting, and implementing control activities for the waiver process and the database utilized to process waiver request applications; (2) responding to risks; and (3) implementing procedures to document monitoring activities that occurred during the waiver process.

These issues are described in detail in *Findings 3*, *4*, and *5* and specifically include questionable decisions made for certain waiver requests, including issuing inconsistent responses to

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businesses within the same industry and not issuing responses to all waiver requests. Additionally, DCED did not establish a timeframe for processing applications and based on the design of the database used to process applications, we were unable to determine for all the applications the timeliness of DCED issuing a response to businesses.

Methodology

The following procedures, listed by objective, were performed to address our audit objectives. Items selected for testing within this audit were based on auditor's professional judgment. The results of our testing, therefore, cannot be projected to, and are not representative of, the corresponding populations.

Objective 1

- Reviewed DCED's Internal Control Green Book Self-Assessment completed by DCED for fiscal year 2019 to determine what controls DCED indicated that it had in place regarding each of the 17 principles within the five components of internal control in order to establish an effective system of internal control. [All Principles]
- Corresponded with the Governor's Office to determine its role regarding decisions on developing the criteria for what businesses were considered to be life-sustaining. [Principles 13, 14, 15]
- Interviewed and corresponded with DCED management and staff in order to:
 - Gain an understanding of the development of the criteria used to deem what businesses were considered to be life-sustaining. [Principles 12, 13]
 - Gain an understanding of the timeline and changes that occurred during the 15 days in which the waiver program accepted applications for items such as application revisions, updates to guidance, updates to the database systems, and implementation of the QC review team. [Principles 12, 13]
- Reviewed and, if applicable, assessed the changes made to the following executive orders, guidance issued by the federal government and the Governor's Office, and waiver program documents prepared by DCED applicable to the waiver program: [Principles 12, 13, 14, 15]
 - Governor's executive order closing all non-life sustaining businesses, effective March 19, 2020.
 - The then Secretary of Health's order regarding life-sustaining businesses, effective March 19, 2020.

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- The March 19, 2020 version of the Department of Homeland Security, Cybersecurity & Infrastructure Security Agency's (CISA) guidance to states and local governments regarding the essential critical infrastructure workforce during COVID-19.
- The 10 versions of the Pennsylvania Industry Operations Guidance (IOG) issued by the Governor's Office that identified the industry groups deemed to be life-sustaining.
- The 15 versions of the *Life Sustaining Business Frequently Asked Questions* issued by the Governor's Office.
- Compared the CISA and IOG guidance in an attempt to identify the differences in which business sectors/industries were deemed to be essential/life-sustaining.
- Reviewed analysis performed by the MultiState Associates regarding which states, as of April 13, 2020, had issued their own guidance pertaining to businesses deemed to be essential under the Stay-at-Home orders instead of utilizing the CISA guidance.

Objective 2

- Reviewed DCED's Internal Control Green Book Self-Assessment completed by DCED for fiscal year 2019 to determine what controls DCED indicated that it had in place regarding each of the 17 principles within the five components of internal control in order to establish an effective system of internal control. [All Principles]
- Reviewed DCED's organizational charts and documents listing the individuals (reviewers) assigned to review waiver applications and those assigned to the Quality Control (QC) review team. The review was performed to determine who was assigned responsibility for the task assigned to DCED to perform the steps involved in processing applications in the waiver program. [Principle 3]
- Corresponded with the Governor's Office to determine its role regarding decisions on developing:
 - The criteria for what businesses were considered to be life-sustaining. [Principles 13, 15]
 - The questions included on the waiver request application document. [Principle 13]
 - The design of the waiver request program and review process. [Principles 10, 11, 13, 15]

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- Interviewed and corresponded with DCED management and staff in order to:
 - Gain an understanding of management controls DCED had in place in order to establish an effective system of internal control as determined to be significant within the context of our audit objectives. [Principles 2, 10, 11, 16, 17]
 - Gain an understanding of the development of the waiver program, including the waiver request application, and the process used to review and document decisions made on business waiver request applications. [Principles 6, 7, 9, 10, 11, 16, 17]
 - Determine what staff were assigned to review waiver request applications. [Principle 3]
 - Gain an understanding of what guidance was provided to businesses and reviewers utilized during the waiver process to determine what businesses were considered to be life-sustaining. [Principles 14, 15]
 - Gain an understanding of what training regarding the waiver program was provided to reviewers and DCED call center staff. [Principles 12, 14]
 - Gain an understanding of what guidance was provided to businesses that contacted the DCED call center. [Principles 12, 15]
 - Gain an understanding of the development and use of the database systems to record the waiver application information submitted by businesses and information relating to the review of applications. [Principles 10, 11, 16, 17]
 - Gain an understanding of the timeline and changes that occurred during the 15 days in which the waiver program accepted applications for items such as application revisions, updates to guidance, updates to the database systems, and implementation of the QC review team. [Principles 2, 3, 7, 9, 11, 16, 17]
 - Determine if any timelines were in place regarding processing and reviewing an application and issuing a response to businesses that submitted a waiver application. [Principles 10, 16, 17]
 - Gain an understanding of the review and approval process in place regarding decisions made on applications and how the database systems were designed to document that process. [Principles 10, 11, 16, 17]
- Reviewed and, if applicable, assessed the changes made to the following executive orders, guidance issued by the federal government and the Governor's Office, and waiver program documents prepared by DCED applicable to the waiver program: [Principles 6, 7, 9, 10, 11, 13, 15, 16, 17]
 - Governor's executive order closing all non-life sustaining businesses, effective March 19, 2020.
 - The then Secretary of Health's order regarding life-sustaining businesses, effective March 19, 2020.

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- The March 19, 2020 version of the Department of Homeland Security, Cybersecurity & Infrastructure Security Agency's (CISA) guidance to states and local governments regarding the essential critical infrastructure workforce during COVID-19.
- The 10 versions of the Pennsylvania Industry Operations Guidance (IOG) issued by the Governor's Office that identified the industry groups deemed to be life-sustaining.
- The 15 versions of the *Life Sustaining Business Frequently Asked Questions* issued by the Governor's Office.
- The five versions of the online waiver application to determine the difference in questions asked on each version.
- The emails and call center script provided to individuals who staffed the DCED call center.
- *Criteria for Reviewing Waiver Requests* developed by DCED for the waiver program reviewers.
- *Tips and Guidance* developed by DCED for the waiver program reviewers.
- Reviewed correspondence between DCED management and the reviewers regarding daily discussions pertaining to questions on the issues being encountered during the review process. [Principles 7, 9, 16, 17]
- Obtained a list prepared by DCED management of 443 of the total 42,380 total applications whose businesses were issued a change to their waiver application response. The types of changes included: (1) Yes to No, (2) No to Yes, (3) Not Required to No, and (4) No to Not Required. [Principles 7, 9, 17]
- For each of the 150 applications selected for testing from the 42,380 waiver applications submitted by businesses (see our selection methodology for these 150 applications described in detail under Objective 3), we performed the following procedures:
 - Determined if the information in the response and/or industry-type notification letters issued to the businesses agreed with the dates and the response and/or industry-type notification letter listed in the data file. [Principle 13]
 - Determined if identification of who made the response decisions and changes, if any, regarding the waiver application was recorded in the data file. [Principles 10, 11]
 - Determined if information is documented in the data file to support that internal controls were established to ensure that the decisions made on waiver applications were reviewed and approved for appropriateness. [Principles 10, 11]

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- Compared the date each business submitted its application to the date that DCED issued a response or industry-type notification letter to the business to determine the timeliness of DCED processing applications.
- Reviewed the language included in the YES, NO, and Not Required (NR) response letters issued to businesses to determine the clarity of the language used to notify businesses of DCED's decision on their waiver request. [Principle 15]

Objective 3

- Reviewed DCED's Internal Control Green Book Self-Assessment completed by DCED for fiscal year 2019 to determine what controls DCED indicated that it had in place regarding each of the 17 principles within the five components of internal control in order to establish an effective system of internal control. [All Principles]
- Corresponded with the Governor's Office to determine its role regarding decisions on developing the design of the waiver request program and review process. [Principle 10]
- Interviewed and corresponded with DCED management and staff in order to:
 - Gain an understanding of management controls DCED had in place in order to establish an effective system of internal control as determined to be significant within the context of our audit objectives. [Principles 2, 10, 16, 17]
 - Gain an understanding of the development of the waiver program, including the waiver request application, and the process used to review and document decisions made on business waiver request applications. [Principles 8, 10, 16, 17]
 - Gain an understanding of the timeline and changes that occurred during the 15 days in which the waiver program accepted applications for items such as application revisions, updates to guidance, updates to the database systems, and implementation of the QC review team. [Principles 2, 8, 16, 17]
 - Determine if any timelines were in place regarding processing and reviewing an application and issuing a response to businesses that submitted a waiver application. [Principles 10, 16, 17]
 - Gain an understanding of the review and approval process in place regarding decisions made on applications and how the database systems were designed to document that process. [Principles 10, 16, 17]
- Reviewed and, if applicable, assessed the changes made to the following executive orders, guidance issued by the federal government and the Governor's Office, and waiver program documents prepared by DCED applicable to the waiver program: [Principles 8, 10, 16, 17]

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- Governor's executive order closing all non-life sustaining businesses, effective March 19, 2020.
- The then Secretary of Health's order regarding life-sustaining businesses, effective March 19, 2020.
- The March 19, 2020 version of the Department of Homeland Security, Cybersecurity & Infrastructure Security Agency's (CISA) guidance to states and local governments regarding the essential critical infrastructure workforce during COVID-19.
- The 10 versions of the Pennsylvania Industry Operations Guidance (IOG) issued by the Governor's Office that identified the industry groups deemed to be life-sustaining.
- The 15 versions of the *Life Sustaining Business Frequently Asked Questions* issued by the Governor's Office.
- *Criteria for Reviewing Waiver Requests* developed by DCED for the waiver program reviewers.
- *Tips and Guidance* developed by DCED for the waiver program reviewers.
- Reviewed correspondence between DCED management and the reviewers regarding daily discussions pertaining to questions on the issues being encountered during the review process. [Principles 8, 16, 17]
- Obtained from DCED management a data file that included (1) the 42,380 waiver applications submitted to DCED during the period March 20, 2020 through April 3, 2020, and (2) the review performed on the applications.
- Obtained a list prepared by DCED management of 443 of the total 42,380 total applications whose businesses were issued a change to their waiver application response. The types of changes included: (1) Yes to No, (2) No to Yes, (3) Not Required to No, and (4) No to Not Required. [Principles 7, 17]
- Selected for testing a total of 150 applications from the 42,380 waiver applications submitted by businesses based on the following:
 - Judgmentally selected 114 applications from the list of 443 applications whose businesses, according to DCED management, received response changes.
 - Judgmentally selected nine industries to determine the consistency of responses to businesses within those industries. The selection of industries was based on the general knowledge that businesses within those industry types were generally not considered to be life-sustaining. The nine industries included: (1) appliance sales/service; (2) notary; (3) pet services; (4) beauty salons; (5) massage; (6) gyms; (7) greenhouse/florist; (8) real estate; and (9) construction.

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- Using keywords associated with each of the nine industries, we performed analysis on the 42,380 applications to determine which applications were associated with each of the nine industries. It should be noted that our use of selected key words may not have identified every application that was associated with each of the nine industries in all cases. Based on our analysis we identified a total of 16,055 applications from the 42,380 which were within the nine industries as noted in the table below. We also note the number of applications we selected for testing from each of these nine industries.
- Judgmentally selected an additional 36 applications from the nine selected industries. We determined that 44 of the 114 previously selected applications as described above were within those nine industries. Our selections therefore included a total of 80 applications within the nine industries to review for consistency of responses within each of these selected industries.

Industry	Number of Applications Identified	Total Number of Applications Selected for Testing	Applications Selected from those with Changes made to DCED Response	Additional Applications Selected
Appliance Sales/Service	240	7	0	7
Gyms	165	6	0	6
Beauty salons	532	6	0	6
Massage	132	5	1	4
Notary	262	6	3	3
Pet services	577	9	6	3
Real estate	156	10	3	7
Construction	13,730 ^{a/}	9	9	0
Greenhouse/Florist	261	22 ^{b/}	22	0
Total Nine Industries	16,055	80	44	36
Other Industries	26,325	70	70	0
Total	42,380	150	114	36
^{a/} - Due to the large number of applications found using a keyword search on construction, we were unable to perform additional analysis to remove those applications from the population that may have included the word construction in their application but were not actual construction type businesses. For example, a paint store that described its operations as selling paint to construction businesses. The population total therefore includes these types of applications submitted by non-construction businesses. ^{b/} - Greenhouse industry included businesses with names and business descriptions that included greenhouse, nursery, garden center, and landscaping. Seventeen of these businesses were greenhouse-related and five were florist-type businesses.				

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- For each of the 150 applications selected for testing, we performed the following procedures:
 - Reviewed the information businesses provided in response to the waiver application questions to determine if it supported that the business was either a life-sustaining business or provided support for a life-sustaining business.
 - Reviewed websites, if available, to determine if the information provided on the application regarding the business' operations was confirmed based on the information provided on the business' website.
 - Reviewed the comments recorded and decisions made by reviewers for reasonableness based on information provided by businesses in their applications and applicable waiver program guidance. [Principle 10]
 - Compared the responses issued by DCED to businesses within each of the nine selected industries (as noted above) for consistency within the respective industry type.
 - Determined if the information in the response and/or industry-type notification letters issued to the businesses agreed with the dates and the response and/or industry-type notification letter listed in the data file.
 - Determined if identification of who made the response decisions and changes, if any, regarding the waiver application was recorded in the data file.
 - Determined if information is documented in the data file to support that internal controls were established to ensure that the decisions made on waiver applications were reviewed and approved for appropriateness. [Principle 10]
 - Compared the date each business submitted its application to the date that DCED issued a response or industry-type notification letter to the business to determine the timeliness of DCED processing applications.
 - Corresponded with DCED management regarding the responses and industry-type notification letters issued to businesses that we found to be questionable to obtain an explanation for why those decisions were made.
- Reviewed correspondence (emails and texts) received by the Governor's Office and DCED provided to us by DCED to determine:
 - If correspondence contained language that placed undue pressure to approve a waiver for a specific business.
 - If the response issued to the business appears reasonable for those businesses whose related correspondence was dated prior to the date that the response was issued to the business.

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Data Reliability

Government Auditing Standards require us to assess the sufficiency and appropriateness of computer-processed information that we used to support our findings, conclusions, and/or recommendations. The assessment of the sufficiency and appropriateness of computer-processed information includes the considerations regarding the completeness and accuracy of the data for the intended purposes.⁸⁵

In addition to the procedures described in the remainder of this section, as part of our overall process in obtaining assurance of the reliability of computer-processed information and data files obtained from DCED, we obtained a management representation letter from DCED. This letter, signed by DCED management, included a confirmation statement indicating that the information and data provided to us had not been altered and was a complete and accurate duplication of the data from its original source, except where redacted as noted for attorney-client privilege. As noted in *Finding 4*, DCED management did not provide the comments field in the data file of 42,380 applications; however, they provided the comments for the 150 applications selected for testing.

- To assess the completeness and accuracy of the data file of 42,380 applications (utilized in audit procedures performed for Objectives 2, 3), provided to us by DCED management, generated from the second waiver program database used during the waiver program that contains: (1) the business waiver request applications submitted to DCED during the waiver program period of March 20, 2020 through April 3, 2020; and (2) the review performed on those applications by reviewers and QC, we conducted audit procedures as follows:⁸⁶
 - Obtained an understanding of the information technology environment and controls for the two database systems used during the waiver program. [Principles 2, 10, 11, 16, 17]
 - Interviewed DCED and the Office of Administration, Office of Information Technology management responsible for maintaining the database systems used to maintain and process waiver applications. As noted in *Finding 3*, we found deficiencies related to the information recorded and retained in the two database systems utilized by DCED. [Principles 2, 10, 11, 16, 17]

⁸⁵ U.S. Government Accountability Office. *Government Auditing Standards*. 2018 Revision. Paragraph 8.98.

⁸⁶ The Office of Administration, Office of Information Technology (OA-OIT) developed a database system at the start of the waiver program; however, due to the high volume of applications received within the first few days of the waiver program, a second database was customized to better meet the needs of DCED and the review team. The application information and related decisions recorded in the first database were transferred into the second database. As a result, the entire population of application information was ultimately housed in the second database. The data provided for this audit was generated from this second database.

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- Obtained emails DCED received from the third-party vendor that managed and forwarded to DCED the online applications submitted by businesses. The emails noted the number of applications forwarded to DCED each day and the final total. The total noted in the final email agreed to and confirmed the total number of applications in the data file provided to us for our audit. [Principle 13]
- Sent confirmation emails to the 157 individuals who submitted the applications for the 150 businesses we selected for testing. We requested the applicant confirm the accuracy of the information provided to us in the data file from the waiver program database regarding the application information submitted and the final responses and industry-type notification letters issued to the businesses. We did not receive a reply from 57 individuals; however, the remaining 100 individuals confirmed the accuracy of the application information.⁸⁷ There were, however, eight individuals that described issues with the responses issued by DCED as discussed in *Finding 4*. [Principle 13]
- As noted in *Finding 3*, DCED failed to retain response letters that were sent to businesses. We obtained the available response and industry notification letters DCED emailed to the 150 businesses selected for testing and confirmed the responses and type of notification letter noted in the data file. [Principles 10, 11]

In accordance with *Government Auditing Standards* and based on the above procedures, we concluded that the waiver program database was sufficiently reliable regarding completeness and accuracy of the application information submitted by businesses, but with significant limitations as to the reliability of data regarding the review process including results of the review process, comments, and responses and/or notification letters issued to businesses. Due to these limitations, when selecting the 150 applications for review, we did not have the comments available to determine what the justification was, if noted, for both the initial decision and any subsequent changes made to the waiver applications. We also were unable to determine, in some cases: (1) the identity of who initially reviewed each application and the identity of any subsequent reviewers; (2) the date(s) that all reviews occurred; (3) the approval of decisions made; and (4) decision making justification, which was not documented, including when changes occurred.

Note that we did not perform procedures to assess the completeness and accuracy of the list provided by DCED of the 443 applications, extracted by DCED from the total 42,380 applications in the data file, whose businesses were issued a change to their initial responses from (1) YES to NO, (2) NO to YES, (3) NR to NO, or (4) NO to NR (utilized in audit procedures performed for Objectives 2, 3). DCED identified these applications based upon its review of comments added by reviewers. As previously noted, we found significant limitations

⁸⁷ Note that one individual stated a difference in the number of employees reported which we determined to not be a significant issue in regard to our audit objectives, and one other individual stated that while they were unsure, they did not state any inaccuracies.

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as to the reliability of the comments. Additionally, DCED management acknowledged that due to technological limitations, there may be more applications whose responses were changed that were not included on the list. Therefore, we determined the list of 443 applications provided by DCED to be data of undetermined reliability. This information however, was the best data available. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings and conclusions.

We also did not perform procedures to assess the completeness and accuracy of the written correspondence received by the Governor’s Office, the Department of Health, and DCED from legislators and lobbyists regarding businesses that applied for a waiver provided to us by DCED (utilized in audit procedures performed for Objective 3). We determined the completeness and content of the written correspondence to be of undetermined reliability, as noted in *Finding 4* of this report. This information was the best data available, however, and although this determination may affect the precision of the number of emails and texts we present, there is sufficient evidence in total to support our findings and conclusions.

Further, we did not perform procedures to assess the completeness and accuracy of the information found in *Appendix F* and referred to in *Finding 1* regarding how each state defined essential businesses during the “Stay-at-Home” orders as reported by the MultiState Associates as of April 13, 2020 (utilized in audit procedures performed for Objective 1). We therefore determined this information to be of undetermined reliability. This information was the best data available and is only considered background information for this report. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings and conclusions.

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Appendix B

Guidance from the Cybersecurity and Infrastructure Security Agency

On March 19, 2020, the United States Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA) issued a memorandum and guidance on identification of essential critical infrastructure workers during COVID-19. As stated in the memorandum, the list of essential workers provided was advisory in nature. DCED management stated that the CISA guidance was very broad, which is why, in part, the Governor’s Office issued Pennsylvania specific guidance – the *Pennsylvania Industry Operation Guidance* (See *Appendix C*). The CISA guidance was utilized as a resource during the business waiver review program and is presented below along with the memorandum.

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U.S. Department of Homeland Security
Cybersecurity & Infrastructure Security Agency
Office of the Director
Washington, DC 20528



CISA
CYBER+INFRASTRUCTURE

March 19, 2020

MEMORANDUM ON IDENTIFICATION OF ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS DURING COVID-19 RESPONSE

FROM: Christopher C. Krebs
Director
Cybersecurity and Infrastructure Security Agency (CISA)

As the Nation comes together to slow the spread of COVID-19, on March 16th, the President issued updated Coronavirus Guidance for America. This guidance states that:

"If you work in a critical infrastructure industry, as defined by the Department of Homeland Security, such as healthcare services and pharmaceutical and food supply, you have a special responsibility to maintain your normal work schedule."

The Cybersecurity and Infrastructure Security Agency (CISA) executes the Secretary of Homeland Security's responsibilities as assigned under the Homeland Security Act of 2002 to provide strategic guidance, promote a national unity of effort, and coordinate the overall federal effort to ensure the security and resilience of the Nation's critical infrastructure. CISA uses trusted partnerships with both the public and private sectors to deliver infrastructure resilience assistance and guidance to a broad range of partners.

In accordance with this mandate, and in collaboration with other federal agencies and the private sector, CISA developed an initial list of "Essential Critical Infrastructure Workers" to help State and local officials as they work to protect their communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security. The list can also inform critical infrastructure community decision-making to determine the sectors, sub-sectors, segments, or critical functions that should continue normal operations, appropriately modified to account for Centers for Disease Control (CDC) workforce and customer protection guidance.

The attached list identifies workers who conduct a range of operations and services that are essential to continued critical infrastructure viability, including staffing operations centers, maintaining and repairing critical infrastructure, operating call centers, working construction, and performing management functions, among others. The industries they support represent, but are not necessarily limited to, medical and healthcare, telecommunications, information technology systems, defense, food and agriculture, transportation and logistics, energy, water and wastewater, law enforcement, and public works.

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We recognize that State, local, tribal, and territorial governments are ultimately in charge of implementing and executing response activities in communities under their jurisdiction, while the Federal Government is in a supporting role. As State and local communities consider COVID-19-related restrictions, CISA is offering this list to assist prioritizing activities related to continuity of operations and incident response, including the appropriate movement of critical infrastructure workers within and between jurisdictions.

Accordingly, this list is advisory in nature. It is not, nor should it be considered to be, a federal directive or standard in and of itself.

In addition, these identified sectors and workers are not intended to be the authoritative or exhaustive list of critical infrastructure sectors and functions that should continue during the COVID-19 response. Instead, State and local officials should use their own judgment in using their authorities and issuing implementation directives and guidance. Similarly, critical infrastructure industry partners will use their own judgment, informed by this list, to ensure continued operations of critical infrastructure services and functions. All decisions should appropriately balance public safety while ensuring the continued delivery of critical infrastructure services and functions.

CISA will continue to work with you and our partners in the critical infrastructure community to update this list as the Nation's response to COVID-19 evolves. We also encourage you to submit how you might use this list so that we can develop a repository of use cases for broad sharing across the country.

Should you have questions about this list, please contact CISA at CISA.CAT@cisa.dhs.gov.

Attachment: "Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response"

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Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response

Version 1.0 (March 19, 2020)

THE IMPORTANCE OF ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS

Functioning critical infrastructure is imperative during the response to the COVID-19 emergency for both public health and safety as well as community well-being. Certain critical infrastructure industries have a special responsibility in these times to continue operations.

This guidance and accompanying list are intended to support State, Local, and industry partners in identifying the critical infrastructure sectors and the essential workers needed to maintain the services and functions Americans depend on daily and that need to be able to operate resiliently during the COVID-19 pandemic response.

This document gives guidance to State, local, tribal, and territorial jurisdictions and the private sector on defining essential critical infrastructure workers. Promoting the ability of such workers to continue to work during periods of community restriction, access management, social distancing, or closure orders/directives is crucial to community resilience and continuity of essential functions.

CONSIDERATIONS FOR GOVERNMENT AND BUSINESS

This list was developed in consultation with federal agency partners, industry experts, and State and local officials, and is based on several key principles:

1. Response efforts to the COVID-19 pandemic are locally executed, State managed, and federally supported
2. Everyone should follow guidance from the CDC, as well as State and local government officials, regarding strategies to limit disease spread.
3. Workers should be encouraged to work remotely when possible and focus on core business activities. In-person, non-mandatory activities should be delayed until the resumption of normal operations.
4. When continuous remote work is not possible, businesses should enlist strategies to reduce the likelihood of spreading the disease. This includes, but is not necessarily limited to, separating staff by off-setting shift hours or days and/or social distancing. These steps can preserve the workforce and allow operations to continue.

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Essential Critical Infrastructure Workforce

5. All organizations should implement their business continuity and pandemic plans, or put plans in place if they do not exist. Delaying implementation is not advised and puts at risk the viability of the business and the health and safety of the employees.
6. In the modern economy, reliance on technology and just-in-time supply chains means that certain workers must be able to access certain sites, facilities, and assets to ensure continuity of functions.
7. Government employees, such as emergency managers, and the business community need to establish and maintain lines of communication.
8. When government and businesses engage in discussions about critical infrastructure workers, they need to consider the implications of business operations beyond the jurisdiction where the asset or facility is located. Businesses can have sizeable economic and societal impacts as well as supply chain dependencies that are geographically distributed.
9. Whenever possible, jurisdictions should align access and movement control policies related to critical infrastructure workers to lower the burden of workers crossing jurisdictional boundaries.

IDENTIFYING ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS


The following list of sectors and identified essential critical infrastructure workers are an initial recommended set and are intended to be overly inclusive reflecting the diversity of industries across the United States. CISA will continually solicit and accept feedback on the list (both sectors/sub sectors and identified essential workers) and will evolve the list in response to stakeholder feedback. We will also use our various stakeholder engagement mechanisms to work with partners on how they are using this list and share those lessons learned and best practices broadly. We ask that you share your feedback, both positive and negative on this list so we can provide the most useful guidance to our critical infrastructure partners. **Feedback can be sent to CISA.CAT@CISA.DHS.GOV.**




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Essential Critical Infrastructure Workforce

HEALTHCARE / PUBLIC HEALTH

- Workers providing COVID-19 testing; Workers that perform critical clinical research needed for COVID-19 response
- Caregivers (e.g., physicians, dentists, psychologists, mid-level practitioners, nurses and assistants, infection control and quality assurance personnel, pharmacists, physical and occupational therapists and assistants, social workers, speech pathologists and diagnostic and therapeutic technicians and technologists)
- Hospital and laboratory personnel (including accounting, administrative, admitting and discharge, engineering, epidemiological, source plasma and blood donation, food service, housekeeping, medical records, information technology and operational technology, nutritionists, sanitarians, respiratory therapists, etc.)
- Workers in other medical facilities (including Ambulatory Health and Surgical, Blood Banks, Clinics, Community Mental Health, Comprehensive Outpatient rehabilitation, End Stage Renal Disease, Health Departments, Home Health care, Hospices, Hospitals, Long Term Care, Organ Pharmacies, Procurement Organizations, Psychiatric Residential, Rural Health Clinics and Federally Qualified Health Centers)
- Manufacturers, technicians, logistics and warehouse operators, and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products
- Public health / community health workers, including those who compile, model, analyze and communicate public health information
- Blood and plasma donors and the employees of the organizations that operate and manage related activities
- Workers that manage health plans, billing, and health information, who cannot practically work remotely
- Workers who conduct community-based public health functions, conducting epidemiologic surveillance, compiling, analyzing and communicating public health information, who cannot practically work remotely
- Workers performing cybersecurity functions at healthcare and public health facilities, who cannot practically work remotely
- Workers conducting research critical to COVID-19 response
- Workers performing security, incident management, and emergency operations functions at or on behalf of healthcare entities including healthcare coalitions, who cannot practically work remotely
- Workers who support food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, such as those residing in shelters
- Pharmacy employees necessary for filling prescriptions
- Workers performing mortuary services, including funeral homes, crematoriums, and cemetery workers
- Workers who coordinate with other organizations to ensure the proper recovery, handling, identification, transportation, tracking, storage, and disposal of human remains and personal effects; certify cause of death; and facilitate access to mental/behavioral health services to the family members, responders, and survivors of an incident

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LAW ENFORCEMENT, PUBLIC SAFETY, FIRST RESPONDERS

- Personnel in emergency management, law enforcement, Emergency Management Systems, fire, and corrections, including front line and management
- Emergency Medical Technicians
- 911 call center employees
- Fusion Center employees
- Hazardous material responders from government and the private sector.
- Workers – including contracted vendors – who maintain digital systems infrastructure supporting law enforcement and emergency service operations.

FOOD AND AGRICULTURE

- Workers supporting groceries, pharmacies and other retail that sells food and beverage products
- Restaurant carry-out and quick serve food operations - Carry-out and delivery food employees
- Food manufacturer employees and their supplier employees—to include those employed in food processing (packers, meat processing, cheese plants, milk plants, produce, etc.) facilities; livestock, poultry, seafood slaughter facilities; pet and animal feed processing facilities; human food facilities producing by-products for animal food; beverage production facilities; and the production of food packaging
- Farm workers to include those employed in animal food, feed, and ingredient production, packaging, and distribution; manufacturing, packaging, and distribution of veterinary drugs; truck delivery and transport; farm and fishery labor needed to produce our food supply domestically
- Farm workers and support service workers to include those who field crops; commodity inspection; fuel ethanol facilities; storage facilities; and other agricultural inputs
- Employees and firms supporting food, feed, and beverage distribution, including warehouse workers, vendor-managed inventory controllers and blockchain managers
- Workers supporting the sanitation of all food manufacturing processes and operations from wholesale to retail
- Company cafeterias - in-plant cafeterias used to feed employees
- Workers in food testing labs in private industries and in institutions of higher education
- Workers essential for assistance programs and government payments
- Employees of companies engaged in the production of chemicals, medicines, vaccines, and other substances used by the food and agriculture industry, including pesticides, herbicides, fertilizers, minerals, enrichments, and other agricultural production aids
- Animal agriculture workers to include those employed in veterinary health; manufacturing and distribution of animal medical materials, animal vaccines, animal drugs, feed ingredients, feed, and bedding, etc.; transportation of live animals, animal medical materials; transportation of deceased animals for disposal; raising of animals for food; animal production operations; slaughter and packing plants and associated regulatory and government workforce
- Workers who support the manufacture and distribution of forest products, including, but not limited to timber, paper, and other wood products
- Employees engaged in the manufacture and maintenance of equipment and other infrastructure necessary to agricultural production and distribution

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ENERGY

Electricity industry:

- Workers who maintain, ensure, or restore the generation, transmission, and distribution of electric power, including call centers, utility workers, reliability engineers and fleet maintenance technicians
- Workers needed for safe and secure operations at nuclear generation
- Workers at generation, transmission, and electric blackstart facilities
- Workers at Reliability Coordinator (RC), Balancing Authorities (BA), and primary and backup Control Centers (CC), including but not limited to independent system operators, regional transmission organizations, and balancing authorities
- Mutual assistance personnel
- IT and OT technology staff – for EMS (Energy Management Systems) and Supervisory Control and Data Acquisition (SCADA) systems, and utility data centers; Cybersecurity engineers; cybersecurity risk management
- Vegetation management crews and traffic workers who support
- Environmental remediation/monitoring technicians
- Instrumentation, protection, and control technicians

Petroleum workers:

- Petroleum product storage, pipeline, marine transport, terminals, rail transport, road transport
- Crude oil storage facilities, pipeline, and marine transport
- Petroleum refinery facilities
- Petroleum security operations center employees and workers who support emergency response services
- Petroleum operations control rooms/centers
- Petroleum drilling, extraction, production, processing, refining, terminal operations, transporting, and retail for use as end-use fuels or feedstocks for chemical manufacturing
- Onshore and offshore operations for maintenance and emergency response
- Retail fuel centers such as gas stations and truck stops, and the distribution systems that support them

Natural and propane gas workers:

- Natural gas transmission and distribution pipelines, including compressor stations
- Underground storage of natural gas
- Natural gas processing plants, and those that deal with natural gas liquids
- Liquefied Natural Gas (LNG) facilities
- Natural gas security operations center, natural gas operations dispatch and control rooms/centers natural gas emergency response and customer emergencies, including natural gas leak calls
- Drilling, production, processing, refining, and transporting natural gas for use as end-use fuels, feedstocks for chemical manufacturing, or use in electricity generation
- Propane gas dispatch and control rooms and emergency response and customer emergencies, including propane leak calls
- Propane gas service maintenance and restoration, including call centers

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- Processing, refining, and transporting natural liquids, including propane gas, for use as end-use fuels or feedstocks for chemical manufacturing
- Propane gas storage, transmission, and distribution centers

WATER AND WASTEWATER

Employees needed to operate and maintain drinking water and wastewater/drainage infrastructure, including:

- Operational staff at water authorities
- Operational staff at community water systems
- Operational staff at wastewater treatment facilities
- Workers repairing water and wastewater conveyances and performing required sampling or monitoring
- Operational staff for water distribution and testing
- Operational staff at wastewater collection facilities
- Operational staff and technical support for SCADA Control systems
- Chemical disinfectant suppliers for wastewater and personnel protection
- Workers that maintain digital systems infrastructure supporting water and wastewater operations

TRANSPORTATION AND LOGISTICS

- Employees supporting or enabling transportation functions, including dispatchers, maintenance and repair technicians, warehouse workers, truck stop and rest area workers, and workers that maintain and inspect infrastructure (including those that require cross-border travel)
- Employees of firms providing services that enable logistics operations, including cooling, storing, packaging, and distributing products for wholesale or retail sale or use.
- Mass transit workers
- Workers responsible for operating dispatching passenger, commuter and freight trains and maintaining rail infrastructure and equipment
- Maritime transportation workers - port workers, mariners, equipment operators
- Truck drivers who haul hazardous and waste materials to support critical infrastructure, capabilities, functions, and services
- Automotive repair and maintenance facilities
- Manufacturers and distributors (to include service centers and related operations) of packaging materials, pallets, crates, containers, and other supplies needed to support manufacturing, packaging staging and distribution operations
- Postal and shipping workers, to include private companies
- Employees who repair and maintain vehicles, aircraft, rail equipment, marine vessels, and the equipment and infrastructure that enables operations that encompass movement of cargo and passengers
- Air transportation employees, including air traffic controllers, ramp personnel, aviation security, and aviation management
- Workers who support the maintenance and operation of cargo by air transportation, including flight crews, maintenance, airport operations, and other on- and off- airport facilities workers

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PUBLIC WORKS

- Workers who support the operation, inspection, and maintenance of essential dams, locks and levees
- Workers who support the operation, inspection, and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations, and other emergent issues
- Workers such as plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences
- Support, such as road and line clearing, to ensure the availability of needed facilities, transportation, energy and communications
- Support to ensure the effective removal, storage, and disposal of residential and commercial solid waste and hazardous waste

COMMUNICATIONS AND INFORMATION TECHNOLOGY

Communications:

- Maintenance of communications infrastructure- including privately owned and maintained communication systems- supported by technicians, operators, call-centers, wireline and wireless providers, cable service providers, satellite operations, undersea cable landing stations, Internet Exchange Points, and manufacturers and distributors of communications equipment
- Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering and reporting
- Workers at Independent System Operators and Regional Transmission Organizations, and Network Operations staff, engineers and/or technicians to manage the network or operate facilities
- Engineers, technicians and associated personnel responsible for infrastructure construction and restoration, including contractors for construction and engineering of fiber optic cables
- Installation, maintenance and repair technicians that establish, support or repair service as needed
- Central office personnel to maintain and operate central office, data centers, and other network office facilities
- Customer service and support staff, including managed and professional services as well as remote providers of support to transitioning employees to set up and maintain home offices, who interface with customers to manage or support service environments and security issues, including payroll, billing, fraud, and troubleshooting
- Dispatchers involved with service repair and restoration

Information Technology:

- Workers who support command centers, including, but not limited to Network Operations Command Center, Broadcast Operations Control Center and Security Operations Command Center
- Data center operators, including system administrators, HVAC & electrical engineers, security personnel, IT managers, data transfer solutions engineers, software and hardware engineers, and database administrators
- Client service centers, field engineers, and other technicians supporting critical infrastructure, as well as

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- manufacturers and supply chain vendors that provide hardware and software, and information technology equipment (to include microelectronics and semiconductors) for critical infrastructure
- Workers responding to cyber incidents involving critical infrastructure, including medical facilities, SLTT governments and federal facilities, energy and utilities, and banks and financial institutions, and other critical infrastructure categories and personnel
 - Workers supporting the provision of essential global, national and local infrastructure for computing services (incl. cloud computing services), business infrastructure, web-based services, and critical manufacturing
 - Workers supporting communications systems and information technology used by law enforcement, public safety, medical, energy and other critical industries
 - Support required for continuity of services, including janitorial/cleaning personnel

OTHER COMMUNITY-BASED GOVERNMENT OPERATIONS AND ESSENTIAL FUNCTIONS

- Workers to ensure continuity of building functions
- Security staff to maintain building access control and physical security measures
- Elections personnel
- Federal, State, and Local, Tribal, and Territorial employees who support Mission Essential Functions and communications networks
- Trade Officials (FTA negotiators; international data flow administrators)
- Weather forecasters
- Workers that maintain digital systems infrastructure supporting other critical government operations
- Workers at operations centers necessary to maintain other essential functions
- Workers who support necessary credentialing, vetting and licensing operations for transportation workers
- Customs workers who are critical to facilitating trade in support of the national emergency response supply chain
- Educators supporting public and private K-12 schools, colleges, and universities for purposes of facilitating distance learning or performing other essential functions, if operating under rules for social distancing
- Hotel Workers where hotels are used for COVID-19 mitigation and containment measures

CRITICAL MANUFACTURING

- Workers necessary for the manufacturing of materials and products needed for medical supply chains, 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.

HAZARDOUS MATERIALS

- Workers at nuclear facilities, workers managing medical waste, workers managing waste from pharmaceuticals and medical material production, and workers at laboratories processing test kits
- Workers who support hazardous materials response and cleanup
- Workers who maintain digital systems infrastructure supporting hazardous materials management operations

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Essential Critical Infrastructure Workforce

FINANCIAL SERVICES

- Workers who are needed to process and maintain systems for processing financial transactions and services (e.g., payment, clearing, and settlement; wholesale funding; insurance services; and capital markets activities)
- Workers who are needed to provide consumer access to banking and lending services, including ATMs, and to move currency and payments (e.g., armored cash carriers)
- Workers who support financial operations, such as those staffing data and security operations centers

CHEMICAL

- Workers supporting the chemical and industrial gas supply chains, including workers at chemical manufacturing plants, workers in laboratories, workers at distribution facilities, workers who transport basic raw chemical materials to the producers of industrial and consumer goods, including hand sanitizers, food and food additives, pharmaceuticals, textiles, and paper products.
- Workers supporting the safe transportation of chemicals, including those supporting tank truck cleaning facilities and workers who manufacture packaging items
- Workers supporting the production of protective cleaning and medical solutions, personal protective equipment, and packaging that prevents the contamination of food, water, medicine, among others essential products
- Workers supporting the operation and maintenance of facilities (particularly those with high risk chemicals and/or sites that cannot be shut down) whose work cannot be done remotely and requires the presence of highly trained personnel to ensure safe operations, including plant contract workers who provide inspections
- Workers who support the production and transportation of chlorine and alkali manufacturing, single-use plastics, and packaging that prevents the contamination or supports the continued manufacture of food, water, medicine, and other essential products, including glass container manufacturing


DEFENSE INDUSTRIAL BASE

- Workers who support the essential services required to meet national security commitments to the federal government and U.S. Military. These individuals, include but are not limited to, aerospace; mechanical and software engineers, manufacturing/production workers; IT support; security staff; security personnel; intelligence support, aircraft and weapon system mechanics and maintainers
- Personnel working for companies, and their subcontractors, who perform under contract to the Department of Defense providing materials and services to the Department of Defense, and government-owned/contractor-operated and government-owned/government-operated facilities

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Appendix C

Pennsylvania Industry Operation Guidance

On March 19, 2020, the day the Governor’s Office issued the business closure order, the first version of the *Pennsylvania Industry Operation Guidance* (IOG) was also issued. The IOG was utilized to determine which businesses were determined to be life-sustaining. This guidance was updated nine additional times through May 28, 2020. The following is the first version issued on March 19, 2020.

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Industry	Sector	Subsector	Industry Group	May Continue Physical Operations	Notes
In extenuating circumstances, special exemptions will be granted to businesses that are supplying or servicing health care providers.					
Natural Resources and Mining	Agriculture, Forestry, Fishing, and Hunting	Crop Production	Oilseed and Grain Farming	Yes	
			Vegetable and Melon Farming	Yes	
			Fruit and Tree Nut Farming	Yes	
			Greenhouse, Nursery, and Floriculture Production	Yes	
			Other Crop Farming	Yes	
		Animal Production	Cattle Ranching and Farming	Yes	
			Hog and Pig Farming	Yes	
			Poultry and Egg Production	Yes	
			Sheep and Goat Farming	Yes	
			Animal Aquaculture	Yes	
			Other Animal Production	Yes	
		Forestry and Logging	Timber Tract Operations	No	
			Forest Nurseries and Local Gathering of Forest Products	No	
		Fishing, Hunting, and Trapping	Logging	No	
			Fishing	Yes	
		Support Activities for Agriculture & Forestry	Hunting and Trapping	Yes	
			Support Activities for Crop Production	Yes	
			Support Activities for Animal Production	Yes	
Construction	Mining, Quarrying, and Gas Extraction	Oil and Gas Extraction	Support Activities for Forestry	No	
				Yes	
		Mining	Coal Mining	No	
			Metal Ore Mining	No	
			Nonmetallic Mineral Mining and Quarrying	No	
		Support Activities for Mining		No	
				No	
				No	
		Construction of Buildings	Residential Building Construction	No	
			Nonresidential Building Construction	No	
				No	
		Heavy and Civil Engineering Construction	Utility Subsystem Construction	No	
			Land Subdivision	No	
			Highway, Street, and Bridge Construction	No	
		Specialty Trade Contractors	Other Heavy and Civil Engineering Construction	No	
			Foundation, Structure, and Building Exterior Contractors	No	
			Building Equipment Contractors	No	
Manufacturing	Manufacturing	Food Manufacturing	Building Finishing Contractors	No	
			Other Specialty Trade Contractors	No	
			Animal Food Manufacturing	Yes	
			Grain and Oilseed Milling	Yes	
			Sugar and Confectionery Product Manufacturing	Yes	
			Fruit and vegetable preserving and specialty food Manufacturing	Yes	
			Dairy Product Manufacturing	Yes	
			Animal Slaughtering and Processing	Yes	
			Seafood Product Preparation and Packaging	Yes	
			Bakeries and Tortilla Manufacturing	Yes	
			Other Food Manufacturing	Yes	
		Beverage and Tobacco Product Manufacturing		Yes	
			Beverage Manufacturing	Yes	
		Textile Mills	Tobacco Manufacturing	No	
			Fiber, Yarn, and Thread Mills	No	
		Textile Product Mills	Fabric Mills	No	
			Textile and Fabric Finishing and Fabric Coating Mills	No	
		Apparel Manufacturing	Textile Furnishing Mills	No	
			Other Textile Product Mills	No	
		Leather & Allied Product Manufacturing	Apparel Knitting Mills	No	
			Cut and Sew Apparel Manufacturing	No	
		Wood Product Manufacturing	Apparel Accessories and Other Apparel Manufacturing	No	
			Leather and Hide Tanning and Finishing	No	
		Paper Manufacturing	Footwear Manufacturing	No	
			Other Leather and Allied Product Manufacturing	No	
		Printing & Related Support Activities	Sawmills and Wood Preservation	No	
			Veneer, Plywood, and Engineered Wood Product Manufacturing	No	
		Petroleum & Coal Products Manufacturing	Other Wood Product Manufacturing	No	
			Pulp, Paper, and Paperboard Mills	Yes	
		Chemical Manufacturing	Converted Paper Product Manufacturing	Yes	
				No	
				Yes	
			Basic Chemical Manufacturing	Yes	
			Resin, Synthetic Rubber, and Artificial Synthetic Fibers and Filaments Manufacturing	Yes	
			Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturing	Yes	
			Pharmaceutical and Medicine Manufacturing	Yes	
		Other Chemical Product and Preparation Manufacturing	Paint, Coating, and Adhesive Manufacturing	No	
			Dye, Cleaning Compound, and Toilet Preparation Manufacturing	Yes	
				Yes	

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Industry	Sector	Subsector	Industry Group	May Continue Physical Operations	Notes
Manufacturing (continued)	Manufacturing (Continued)	Plastics & Rubber Products Manufacturing	Plastics Product Manufacturing	Yes	
			Rubber Product Manufacturing	Yes	
		Nonmetallic Mineral Product Manufacturing	Clay Product and Refractory Manufacturing	No	
			Glass and Glass Product Manufacturing	No	
			Cement and Concrete Product Manufacturing	Yes	
			Lime and Gypsum Product Manufacturing	No	
			Other Nonmetallic Mineral Product Manufacturing	No	
		Primary Metal Manufacturing	Iron and Steel Mills and Ferroalloy Manufacturing	Yes	
			Steel Product Manufacturing from Purchased Steel	Yes	
			Alumina and Aluminum Production and Processing	Yes	
			Nonferrous Metal (except Aluminum) Production and Processing	No	
			Foundries	No	
		Fabricated Metal Product Manufacturing	Forging and Stamping	No	
			Cutlery and Handtool Manufacturing	No	
			Boiler, Tank, and Shipping Container Manufacturing	No	
			Hardware Manufacturing	No	
			Spring and Wire Product Manufacturing	No	
			Machine Shops, Turned Product, and Screw, Nut, and Bolt Manufacturing	No	
			Coating, Engraving, Heat Treating, and Allied Activities	No	
			Other Fabricated Metal Product Manufacturing	No	
		Machine Manufacturing	Agriculture, Construction, and Mining Machinery Manufacturing	Yes	
			Industrial Machinery Manufacturing	No	
			Commercial and Service Industry Machinery Manufacturing	Yes	
			Ventilation, Heating, Air-Conditioning, and Commercial Refrigeration Equipment Manufacturing	Yes	
			Metalworking Machinery Manufacturing	No	
			Engine, Turbine, and Power Transmission Equipment Manufacturing	Yes	
			Other General Purpose Machinery Manufacturing	No	
		Computer & Electronic Product Manufacturing	Computer and Peripheral Equipment Manufacturing	No	
			Communications Equipment Manufacturing	No	
			Audio and Video Equipment Manufacturing	No	
			Semiconductor and Other Electrical Component Manufacturing	Yes	
			Navigational, Measuring, Electromedical, and Control Instruments Manufacturing	Yes	
		Electrical Equipment, Appliance, & Component Manufacturing	Manufacturing and Reproducing Magnetic and Optical Media	No	
			Electric Lighting Equipment Manufacturing	No	
			Household Appliance Manufacturing	No	
			Electrical Equipment Manufacturing	No	
			Other Electrical Equipment and Component Manufacturing	No	
		Transportation Equipment Manufacturing	Motor Vehicle Manufacturing	No	
			Motor Vehicle Body and Trailer Manufacturing	No	
			Motor Vehicle Parts Manufacturing	No	
			Aerospace Product and Parts Manufacturing	No	
			Railroad Rolling Stock Manufacturing	No	
			Ship and Boat Building	No	
			Other Transportation Equipment Manufacturing	No	
		Furniture & Related Product Manufacturing	Household and Institutional Furniture and Kitchen Cabinet Manufacturing	No	
			Office Furniture (including Fixtures) Manufacturing	No	
			Other Furniture Related Product Manufacturing	No	
		Miscellaneous Manufacturing	Medical Equipment and Supplies Manufacturing	Yes	
			Other Miscellaneous Manufacturing	No	

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Industry	Sector	Subsector	Industry Group	May Continue Physical Operations	Notes
Trade, Transportation, & Utilities	Wholesale Trade	Merchant Wholesalers, Durable Goods	Motor Vehicle and Motor Vehicle Parts and Supplies Merchant Wholesalers	Yes	
			Furniture and Home Furnishing Merchant Wholesalers	No	
			Lumber and Other Construction Materials Merchant Wholesalers	No	
			Professional and Commercial Equipment and Supplies Merchant Wholesalers	Yes	
			Metal and Mineral (except Petroleum) Merchant Wholesalers	Yes	
			Electrical and Electronic Goods Merchant Wholesalers	Yes	
			Hardware, and Plumbing and Heating Equipment and Supplies Merchant Wholesalers	Yes	
			Machinery, Equipment, and Supplies Merchant Wholesalers	Yes	
			Miscellaneous Durable Goods Merchant Wholesalers	Yes	
		Merchant Wholesalers, Nondurable Goods	Paper and Product Merchant Whoelsalers	Yes	
			Drugs and Druggists' Sundries Merchant Wholesalers	Yes	
			Apparel, Piece Goods, and Notions Merchant Wholesalers	No	
			Grocery and Related Product Wholesalers	Yes	
			Farm Product Raw Material Merchant Wholesalers	Yes	
			Chemical and Allied Products Merchant Wholesalers	Yes	
			Petroleum and Petroleum Products Merchant Wholesalers	Yes	
			Beer, Wine, and Distilled Alcoholic Beverage Merchant Wholesalers	Yes	
			Miscellaneous Nondurable Goods Merchant Wholesalers	No	
			Wholesale Electronic Markets and Agents & Brokers	No	
		Retail Trade	Automobile Dealers	No	
			Other Motor Vehicle Dealers	No	
			Automotive Parts, Accessories, and Tire Stores	Yes	
			Furniture Stores	No	
			Home Furnishings Stores	No	
			Electronics & Appliance Stores	No	
			Building Material, Garden Equipment, & Supplies Dealers	Yes	
			Lawn and Garden Equipment and Supplies Stores	No	
			Grocery Stores	Yes	
			Specialty Food Stores	No	
			Beer, Wine, and Liquor Stores (Beer Distributors to Remain Open)	Yes	
			Health & Personal Care Stores	No	
			Gasoline Stations	Yes	
			Clothing Stores	No	
			Shoe Stores	No	
			Jewelry, Luggage, and Leather Goods Stores	No	
			Sporting Goods, Hobby, Book, & Music Stores	No	
			Book, Periodical, and Music Stores	No	
			Department Stores	No	
			Other General Merchandise Stores	Yes	
			Florists	No	
			Office Supplies, Stationery, and Gift Stores	No	
			Used Merchandise Stores	No	
			Other Miscellaneous Store Retailers	No	
			Electronic Shopping and Mail-Order Houses	Yes	
			Vending Machine Operators	No	
			Direct Selling Establishments	No	
	Transportation and Warehousing	Air Transportation	Scheduled Air Transportation	Yes	
			Nonscheduled Air Transportation	Yes	
		Rail Transportation		Yes	
		Water Transportation	Deep Sea, Coastal, and Great Lakes Water Transportation	Yes	
			Inland Water Transportation	Yes	
		Truck Transportation	General Freight Trucking	Yes	
			Specialized Freight Trucking	Yes	
		Transit and Ground Passenger Transportation	Urban Transit Systems	Yes	
			Interurban and Rural Bus Transportation	Yes	
			Taxi and Limousine Service	Yes	
			School and Employee Bus Transportation	Yes	
			Charter Bus Industry	No	
			Other Transit and Ground Passenger Transportation	Yes	
		Pipeline Transportation	Pipeline Transportation of Crude Oil	Yes	
			Pipeline Transportation of Natural Gas	Yes	
			Other Pipeline Transportation	Yes	
		Scenic and Sightseeing Transportation	Scenic and Sightseeing Transportation, Land	No	
			Scenic and Sightseeing Transportation, Water	No	
			Scenic and Sightseeing Transportation, Other	No	
		Support Activities for Transportation	Support Activities for Air Transportation	Yes	
			Support Activities for Rail Transportation	Yes	
			Support Activities for Water Transportation	Yes	
			Support Activites for Road Transportation	Yes	
			Freight Transportation Arrangement	Yes	
			Other Support Activities for Transportation	Yes	
		Postal Service		Yes	
		Couriers and Messengers	Couriers	Yes	
			Local Messengers and Local Delivery	Yes	
		Warehousing and Storage		Yes	
	Utilities	Utilities	Electric Power Generation, Transmission, and Distribution	Yes	
			Natural Gas Distribution	Yes	
			Water, Sewage and Other Systems	Yes	

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Industry	Sector	Subsector	Industry Group	May Continue Physical Operations	Notes
Information	Information	Publishing Industries (except Internet)	Newspaper, Periodical, Book, and Directory Publishers	Yes	
			Software Publishers	No	
		Motion Picture and Sound Recording Industries	Motion Picture and Video Industries	No	
			Sound Recording Industries	No	
		Broadcasting (except Internet)	Radio and Television Broadcasting	Yes	
			Cable and Other Subscription Programming	Yes	
		Telecommunications	Wired Telecommunications Carriers	Yes	
			Wireless Telecommunications Carriers (except Satellite)	Yes	
			Telecommunications Resellers	No	
			Satellite Telecommunications	Yes	
			Cable and Other Program Distribution	Yes	
			Other Telecommunications	Yes	
		Data Processing, Hosting, and Related Services		Yes	
		Other Information Services		Yes	
Financial Activities	Finance and Insurance	Monetary Authorities - Central Bank		Yes	
		Credit Intermediation and Related Activities	Depository Credit Intermediation	Yes	
			Nondepository Credit Intermediation	Yes	
			Activities Related to Credit Intermediation	Yes	
		Securities, Commodity Contracts, and Other Financial Investments and Related Activities	Securities and Commodity Contracts Intermediation and Brokerage	No	
			Securities and Commodity Exchanges	No	
			Other Financial Investment Activities	No	
		Insurance Carriers and Related Activities	Insurance Carriers	No	
			Agencies, Brokerages, and Other Insurance Related Activities	No	
		Funds, Trusts, and Other Financial Activities	Insurance and Employee Benefit Funds	No	
			Other Investment Pools and Funds	No	
	Real Estate and Rental and Leasing	Real Estate	Lessors of Real Estate	No	
			Offices of Real Estate Agents and Brokers	No	
			Activities Related to Real Estate	No	
		Rental and Leasing Services	Automotive Equipment Rental and Leasing	Yes	
			Consumer Goods Rental	Yes	
			General Rental Centers	Yes	
			Commercial and Industrial Machinery and Equipment Rental and Leasing	Yes	
		Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)		No	
Professional and Business Services	Professional, Scientific, and Technical Services	Legal Services		No	
		Accounting, Tax Preparation, Bookkeeping, and Payroll Services		No	
		Architectural, Engineering, and Related Services		No	
		Specialized Design Services		No	
		Computer Systems Design and Related Services		No	
		Management, Scientific, and Technical Consulting Services		No	
		Scientific Research and Development Services		Yes	
		Advertising and Related Services		No	
		Other Professional, Scientific, and Technical Services		Yes	
		Management of Companies and Enterprises		No	
	Administration and Support and Waste Management and Remediation Services	Administrative and Support Services	Office Administrative Services	No	
			Facilities Support Services	Yes	
			Employment Services	No	
			Business Support Services	No	
			Travel Arrangement and Reservation Services	No	
			Investigation and Security Services	Yes	
			Services to Building and Dwellings	Yes	
			Other Support Services	No	
			Waste Collection	Yes	
		Waste Management and Remediation Services	Waste Treatment and Disposal	Yes	
			Remediation and Other Waste Management Services	Yes	
Education and Health Services	Educational Services	Elementary and Secondary Schools		No	
		Junior Colleges		No	
		Colleges, Universities, and Professional Schools		No	
		Business Schools and Computer and Management Training		No	
		Technical and Trade Schools		No	
		Other Schools and Instruction		No	
		Education Support Services		No	
	Health Care and Social Assistance	Ambulatory Health Care Services	Offices of Physicians	Yes	Elective procedures prohibited
			Offices of Dentists	Yes	Elective procedures prohibited
			Offices of Other Health Practitioners	Yes	Elective procedures prohibited
			Outpatient Care Centers	Yes	Elective procedures prohibited
			Medical and Diagnostic Laboratories	Yes	Elective procedures prohibited
			Home Health Care Services	Yes	Elective procedures prohibited
			Other Ambulatory Health Care Services	Yes	Elective procedures prohibited
		Hospitals	General Medical and Surgical Hospitals	Yes	Elective procedures prohibited
			Psychiatric and Substance Abuse Hospitals	Yes	Elective procedures prohibited
			Specialty (except Psychiatric and Substance Abuse) Hospitals	Yes	Elective procedures prohibited
		Nursing and Residential Care Facilities	Nursing Care Facilities	Yes	
			Residential Mental Retardation, Mental Health and Substance Abuse Facilities	Yes	
			Community Care Facilities for the Elderly	Yes	
			Other Residential Care Facilities	Yes	
		Social Assistance	Individual and Family Services	Yes	
			Community Food and Housing, and Emergency and Other Relief Services	Yes	
			Vocational Rehabilitation Services	Yes	
		Child Day Care Services		No	

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Industry	Sector	Subsector	Industry Group	May Continue Physical Operations	Notes
Leisure and Hospitality	Arts, Entertainment, and Recreation	Performing Arts, Spectator Sports, and Related Industries	Performing Arts Companies	No	
			Spectator Sports	No	
			Promoters of Performing Arts, Sports, and Similar Events	No	
			Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures	No	
			Independent Artists, Writers, and Performers	No	
		Museums, Historical Sites, and Similar Institutions	No		
		Amusement, Gambling, and Recreation Industries	Amusement Parks and Arcades	No	
			Gambling Industries	No	
	Other Amusement and Recreation Industries		No		
	Accommodation and Food Services	Accommodation	Traveler Accommodation	No	
			RV (Recreational Vehicle) Parks and Recreational Camps	Yes	Residential only
			Rooming and Boarding Houses	Yes	Residential only
		Food Services and Drinking Places	Full-Service Restaurants	Yes	Takeout only
			Limited-Service Eating Places	Yes	Takeout only
			Special Food Services	No	
			Drinking Places (Alcoholic Beverages)	No	
Other Services (Except Public Administration)	Other Services (except Public Administration)	Repair and Maintenance	Automotive Repair and Maintenance	Yes	
			Electronic and Precision Equipment Repair and Maintenance	Yes	
			Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	Yes	
			Automotive and Electronic) Repair and Maintenance		
			Personal and Household Goods Repair and Maintenance	Yes	
		Personal and Laundry Services	Personal Care Services	No	This category includes barbershops, nail salons, beauty salons, gyms (including yoga, barre and spin facilities).
			Death Care Services	Yes	
			Drycleaning and Laundry Services	No	
			Other Personal Services	No	
			Religious Organizations	Yes	
		Religious, Grantmaking, Civic, Professional, and Similar Organizations	Grantmaking and Giving Services	Yes	
			Social Advocacy Organizations	Yes	
			Civic and Social Organizations	Yes	
			Business, Professional, Labor, Political, and Similar Organizations	No	
			Private Households	No	

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Appendix D

Life Sustaining Business Frequently Asked Questions

On March 24, 2020, the Pennsylvania Department of Community and Economic Development (DCED) posted on-line the first of 15 versions of the *Life Sustaining Business Frequently Asked Questions* (FAQ) developed by the Governor’s Office. The first four versions of the FAQ were issued during the time that businesses were utilizing them as guidance during the waiver program and the remaining versions were issued after the waiver program closed on April 3, 2020. This document provided additional detail regarding which businesses were deemed to be life-sustaining as listed in the *Pennsylvania Industry Operation Guidance*. The following are the first version of the FAQ and the final version released on May 28, 2020. It is important to note that while DCED indicated that the first version was released on March 24, 2020, the document provided to us by DCED as the first version of the FAQ, that is presented below, includes “Updated 5/24/20” at the top in error. Additionally, highlighted areas in the below FAQ were made by DCED prior to providing us with the documents.

Updated 5/24/2020

Life Sustaining Business Frequently Asked Questions

1. How can I determine whether my business is considered a life-sustaining business and is allowed to continue in-person operations?

Businesses should first refer to the Governor's Order and the list of life-sustaining businesses which is available [here](#). The categories in the list were drawn from the classifications of the North American Industry Classification System (NAICS).

Your industry sector (drawn from the NAICS classifications) appears on the life-sustaining business list. You may have used your business' NAICS code to buy insurance, manage employee benefits, pay taxes or interact with other governmental entities. If you do not know your NAICS classification, you should review documents relating to those activities for help identifying what classification you fall within. More information about NAICS classifications can be found [here](#).

If your business' NAICS classification falls within a category that is listed as "life-sustaining" on the list of life-sustaining businesses you are not required to seek a waiver, and may remain open provided that you adhere to social distancing restrictions and taking other mitigation measures to ensure the health and safety of employees and patrons.

If your business' NAICS classification does not fall within a category listed as "life-sustaining" you may qualify for a waiver if your business provides goods or services necessary to maintain operations of a business on the life-sustaining list.

In making waiver determinations, the Department of Community and Economic Development (DCED) is maintaining consistency with an advisory issued by the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency ("CISA Advisory") entitled "Identifying Critical Infrastructure During COVID-19".

The CISA Advisory broadly authorizes in-person activity by businesses and workers necessary for production, operation and maintenance of supply chains of the following critical infrastructure categories:

- materials and products needed for medical supply chains,
- essential transportation,
- energy,
- essential communications,
- food and agriculture,
- chemical manufacturing
- nuclear facilities,
- the operation of dams, water and wastewater treatment,

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- emergency services, and
- the defense industrial base.

Please note that waivers for these activities will only be granted to the extent that they are providing a good or service directly to a critical infrastructure category, as opposed to non-critical operations that may broadly fit within these categories.

2. Who may want a waiver?

Any business that does not fall within a category listed as “life-sustaining” on the list of life sustaining businesses, but which provides goods or services necessary to maintain operations at a business on the life-sustaining list or in one of the critical infrastructure categories outlined in the CISA Advisory should request a waiver.

3. Are businesses allowed to continue in-person operations while requesting a waiver?

Businesses that have requested a waiver should comply with the Governor’s Order and suspend in-person operations until a waiver is approved and provided.

4. How does a business request a waiver?

The easiest and quickest way to submit a waiver is to request a waiver via the [online portal](#) available at the Department of Community and Economic Development website.

5. What should be included in the waiver request?

Waiver requests submitted pursuant to the CISA Advisory should demonstrate that the manufacturing, construction and services businesses activity is part of the supply chain as detailed in the Life-Sustaining Business List and critical infrastructure categories contained in the CISA Advisory.

Businesses seeking a waiver as part of the supply chain or as necessary to support life-sustaining business should include a detailed narrative of their role in the supply chain of goods or services, including the category of critical infrastructure or life sustaining business to which they provide goods or services, the extent of their activity which this category comprises, and specific examples of critical or life sustaining infrastructure

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businesses or sectors with which the applicant business has contracts, etc. The waiver request form is available [here](#) and contains further detail on the information to be submitted in the waiver request.

6. How long will it take to get a decision on a submitted waiver ?

DCED has received a high volume of waiver requests and is processing waivers as rapidly as possible.

7. My business is in a category allowed to maintain in-person operations, or I was granted a waiver, what should I do to keep employees safe?

All businesses which are maintaining in-person operations must follow social distancing and COVID-19 mitigation guidance provided by the PA Department of Health and CDC and ensure that there are no gatherings larger than 10 people as recommended by the CDC.

8. If a business is classified as non-life-sustaining, but has the ability to operate remotely, must the business close down?

Non-life-sustaining businesses may continue to operate remotely virtually or by telework (i.e. working from home) conducted individually, and in doing so must follow the social distancing and other COVID-19 mitigation guidance provided by the Pennsylvania Department of Health and CDC.

9. Local political units were absent from the list. Should municipalities suspend in-person operations?

Local political units are not required to suspend in-person operations but should curtail in-person operations to the extent practicable and follow COVID-19 mitigation guidance provided by the Pennsylvania Department of Health and the CDC. All decisions should appropriately balance public safety while ensuring the continued delivery of critical infrastructure services and functions.

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Common Enforcement Questions

10. If a business has been granted a waiver, how can the business demonstrate that fact to an enforcement agency?

Businesses approved for a waiver will receive written confirmation, which they may share with an enforcement agency to confirm authorization to maintain operations.

11. How will this order be enforced? Will there be warnings before fines or other enforcement actions?

The closure of non-life sustaining businesses is a measure that has been taken to control the spread of a communicable disease, COVID-19, and has been ordered by the Governor and the Secretary of Health. The closures are enforceable through criminal penalties, under the Disease Control and Prevention Law of 1955 and the Administrative Code of 1929.

While other criminal penalties in those laws, as well as under the Crimes Code and the Liquor Code, may apply, the following are the most directly applicable provisions for enforcement of the Orders: 71 P. S. § 1409 and 35 P.S. § 521.20(a).

We strive to ensure enforcement of the orders will be consistent throughout the Commonwealth. We also expect that any discipline for violation of the orders will be progressive discipline that begins with a warning to any suspected violator. Furthermore, enforcement should be prioritized to focus on businesses where people congregate.

12. How should municipalities and local governments exercise their enforcement authority in supporting the Governor's order?

State and local officials should use best judgment in exercising their authorities and issuing implementation directives and guidance. Similarly, critical infrastructure industry partners must use best judgment, informed by the list and CISA Advisory to ensure continued operations of critical infrastructure services and functions. All such decisions should appropriately balance public health and safety while ensuring the continued delivery of critical infrastructure services and functions.

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Common Questions About General Business Categories

- 13. May non-life sustaining business which are required to suspend in-person operations retain essential personnel to process payroll and insurance claims, maintain security, and engage in similar limited measures on an occasional basis?**

Yes, but telework (i.e. working from home) should be employed whenever possible, and social distancing must be observed.

- 14. I requested a waiver, and specifically referenced the portion of my business that supports the health care industry. Does my waiver apply to all my activities?**

No. If you received a waiver in response to a request in which you specifically identified a particular element of your business as essential to health care or another life-sustaining operation, that waiver only relates to those activities that you specifically identified.

- 15. May businesses continue fulfilling mail orders/online orders?**

In-person public facing locations must be suspend in-person operations. Mail order and online fulfilment may continue with essential staff but telework should be employed whenever possible, and social distancing must be observed.

- 16. I am a contractor engaging in emergency repairs who received a waiver or was told that I do not require a waiver. May I perform non-essential work?**

Your waiver, or general authority to conduct emergency repairs, is limited to performing those tasks necessary to provide repair services to customers. No new construction or elective rehabilitation or remodeling may be performed.

- 17. I have a “one person” operation that operates out of my home, with no customer access or physical facility. Must I seek a waiver?**

No. You may continue to work as you have no physical location. In-home businesses should suspend any in-person elements in which customers must come to the home business.

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- 18. If a manufacturing business is in a classification that is not to maintain in-person operations, but is in the process of converting to a manufacturing process that is authorized to maintain in-person operations in order to address COVID-19, what should they do?**

Businesses not clearly in a category authorized to maintain in-person operations according to the list and [CISA Advisory](#) should request a waiver. In this particular circumstance, please note in the waiver request that the facility is transferring operations to a life-sustaining function and the Department of Community and Economic Development will communicate with you about next steps. Please note that you may be denied a waiver until DCED can confirm your desire and ability to transfer to a life-sustaining function.

Common Questions About Specific Business Categories

- 19. May I complete my customer's residential construction project?**

General construction must be suspended but limited activities may continue to the extent necessary to stabilize the site, temporarily prevent weather damage and make emergency repairs.

- 20. May businesses which are required to suspend in-person operations maintain limited in-person essential personnel for security, maintaining good repair, processing of essential functions, or to maintain compliance with federal, state or local regulatory requirements?**

Businesses suspending in-person operations must limit on-site personnel to maintain critical functions, and in all cases follow social distancing and COVID-19 mitigation guidance provided by the PA Department of Health and CDC. Such building services do not require a waiver.

- 21. May childcare facilities maintain in-person operations?**

The following categories of childcare facilities may maintain in-person operations limited to serving employees of life-sustaining businesses that remain open:

- Child care facilities operating under the Department of Human Services, Office of Child Development and Early Learning waiver process;

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- Group and family child care operating in a residence;
- Part-day school age programs operating under an exemption from the March 19, 2020 business closure Orders.

22. May hotels and motels maintain in-person operations?

Hotels and motels are not required to suspend in-person operations. Hotels may not operate any dine-in food services; all food services must be a takeout or delivery only option.

23. May restaurants, bars, breweries, distillers and wineries continue to provide to-go sales of alcohol?

All restaurants, bars, breweries, distillers and wineries should continue to adhere to PLCB guidance. Currently to-go sales are authorized but licensees may not allow the service or consumption of food or alcohol on the licensed premises. PLCB licensees should check the PLCB website for further updates.

24. May notary and title services maintain in-person operations?

Notary and title offices may maintain in-person operations only as required to allow notaries and title service providers to participate in court functions deemed essential by a president judge per the Pennsylvania Supreme Court's order of March 18, 2020, or similar federal court directive, and notaries and title service providers may access their offices to effectuate such functions and directives; or for healthcare-related matters.

25. May law offices maintain in-person operations?

Law offices may maintain in-person operations only as required to allow attorneys to participate in court functions deemed essential by a president judge per the Pennsylvania Supreme Court's order of March 18, 2020, or similar federal court directive, and lawyers may access their offices to effectuate such functions and directives.

26. May bail bondsmen maintain in-person operations?

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Bail bond offices may maintain in-person operations only as required to allow bail bondsman to participate in court functions deemed essential by a president judge per the Pennsylvania Supreme Court's order of March 18, 2020, or similar federal court directive, and bail bondsmen may access their offices to effectuate such functions and directives.

27. May pet stores offer in-person ancillary services, such as grooming or training?

No, pet stores may remain open solely to sell pet supplies or provide veterinary services. Pet stores with kennels and pet boarding operations may maintain in-person operations related to these services.

28. May appliance stores maintain in-person operations?

Appliance stores may not maintain in-person sales operations either at their physical locations or off-site, but in-home emergency repairs may continue.

29. I operate a golf course, what in-person operations may continue?

Golf courses and similar outdoor businesses are permitted to have the course mowed and conduct other essential maintenance and upkeep but golfers are not permitted on site.

30. May sporting goods, hunting, fishing and tackle stores maintain in-person operations?

Sporting goods stores, hunting fishing and tackle stores may not maintain in-person operations, but may maintain self-service operations.

31. May bicycle sale and repair shops maintain in-person operations?

Bike shops may not maintain in-person sales but repair work may continue.

32. May firearm dealers maintain in-person operations?

Firearms dealers may operate physical businesses on a limited basis to complete only the portions of a sale/transfer that must be conducted in-person under the law, subject to the following restrictions: 1) all such sale/transfers will be conducted by individual

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appointment during limited hours only so as to minimize social interactions and congregating of persons; 2) the dealer will comply with social distancing, sanitization of applicable area between appointments, and other mitigation measures to protect its employees and the public.

33. May cell phone sale and repair stores maintain in-person operations?

Cell phone repair stores may continue to repair cell phones and similar household goods. Electronic appliance store and sales kiosks must suspend in-person operations per the Governor's and Secretary's orders.

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Life Sustaining Business Frequently Asked Questions

1. What businesses may maintain in-person operations based on the Red, Yellow and Green Phases of Reopening?

As described further in the Governor's [Process to Reopen Pennsylvania](#) plan, the Commonwealth is employing a regional and industry-specific approach to reopening non-life-sustaining businesses. In counties that have been designated as in the Red Phase, businesses permitted to conduct in-person operations are:

- 1) Those listed as life sustaining according to the Governor's and Secretary's Non-Life Sustaining Business Closure Orders (as amended).
- 2) Those that received an exemption from those Orders from the Department of Community and Economic Development, or
- 3) Those permitted to conduct in-person operations pursuant to a subsequent applicable Order or amendment to those Orders from the Governor and Secretary including:
 1. Construction Industry;
 2. Vehicle Dealerships; and
 3. Real Estate Industry.

In counties that have been designated as in the Yellow and Green Phases, all businesses, except those categories specifically excluded in the Governor's Process to Reopen Pennsylvania Plan and the Governor's and Secretary of Health's orders, are permitted to conduct in-person operations, so long as they strictly adhere to the requirements of the Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public, available [here](#).

2. How can I determine whether my business is considered a life-sustaining business and can continue in-person operations in Red Phase counties?

Businesses should first refer to the Governor's Order and the list of life-sustaining businesses which is available [here](#). The categories in the list were drawn from the classifications of the North American Industry Classification System (NAICS).

Your industry sector (drawn from the NAICS classifications) appears on the life-sustaining business list. You may have used your business' NAICS code to buy insurance, manage employee benefits, pay taxes or interact with other governmental entities. If you do not know your NAICS classification, you should review documents relating to those activities for help identifying what classification you fall within.

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You can also use the search feature available at www.census.gov/naics. In the "2017 NAICS Search" box on the left side of that page, enter a keyword that describes your kind of business. A list of primary business activities containing that keyword and the corresponding NAICS codes will appear. Choose the one that most closely corresponds to your primary business activity or refine your search to obtain other choices.

If your business' NAICS classification falls within a category that is listed as "life-sustaining" on the list of life-sustaining businesses you may maintain in-person operations provided that you adhere to social distancing restrictions and taking other mitigation measures to ensure the health and safety of employees and patrons.

If your business' NAICS classification does not fall within a category listed as "life-sustaining" you may maintain in-person operations in counties designated as within the Red Phase of reopening if you fall within one of the three categories listed in Answer 1.

In making exemption determinations, the Department of Community and Economic Development (DCED) maintained consistency with an advisory issued by the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency ("CISA Advisory") entitled "Identifying Critical Infrastructure During COVID-19." In analyzing requests for exemptions, DCED utilized CISA Advisory Version 1.1, originally issued on March 19, 2020, as amended on March 23, 2020. Version 1.1 of the CISA Advisory is available [here](#). Subsequent changes to the CISA guidance were not adopted by the commonwealth and were not applied when analyzing requests for exemptions.

The CISA Advisory authorizes in-person activity by businesses and workers necessary for production, operation and maintenance of supply chains of the following critical infrastructure categories:

- materials and products needed for medical supply chains,
- essential transportation,
- energy,
- essential communications,
- food and agriculture,
- chemical manufacturing
- nuclear facilities,
- the operation of dams, water and wastewater treatment,
- emergency services, and
- the defense industrial base.

Exemptions for these activities were only granted to the extent that the activity are provides a good or service directly to a critical infrastructure category, as opposed to non-critical operations that may broadly fit within the categories.

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3. What categories of businesses are required to continue to suspend in-person operations in counties designated as being in the Yellow Phase of reopening according to the Governor's Process to Reopen Pennsylvania Plan?

Under the Process to Reopen Pennsylvania, businesses in the following categories are required to continue to suspend in-person operations, or in the case of restaurants and bars continue to operate on a limited basis (curbside pickup, takeout or delivery, outdoor dining) until their county is designated as being in the Green Phase:

- Indoor recreation, health and wellness facilities and personal care services;
- All entertainment;
- Indoor malls; and
- Restaurants and Bars.

4. What type of businesses fall under "indoor recreation," "health and wellness facilities," and "all entertainment" categories, that are required to continue to suspend in-person operations in the Yellow Phase?

Indoor Recreation, Health and Wellness Facilities and Personal Care Services and Entertainment, each as defined below, must remain closed in counties designated as being in Yellow Phase of reopening.

Indoor recreation includes bowling, arcades, racquetball and other indoor sports or training, go-kart and other racing, laser tag, pool halls, trampoline facilities, indoor mini golf, and other similar facilities.

Health and wellness facilities include gyms, saunas, tattoo and piercing shops, tanning, spas, hair salons, nail salons, entities that provide massage therapy, and other similar facilities.

Entertainment includes casinos, theaters, concerts, museums, zoos and botanical gardens, racetracks, semiprofessional, or amateur/membership sports teams or clubs, amusement and water parks, carnivals, playgrounds, and other similar facilities. Professional sports (defined as any sporting event at which the participants are paid by a league or team, or at which individuals or teams receive prizes or purse) are allowed to practice or play in the yellow and green phases of reopening without on-site or venue spectators if the team (or league on behalf of the team) has developed a COVID-19 safety plan. Such a plan must be approved by DOH and include, among other requirements, testing or screening and monitoring of all on-venue players and personnel. Additionally, no fans or spectators may be permitted on interior or exterior venue property. Professional sports organizations are encouraged to contact the

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administration to share their reopening plans and get them approved by the Department of Health.

Indoor malls must remain closed until the county in which the mall is located is designated as being in the Green Phase. Only tenants with external entrances may open to customers (if they follow the business guidance) as well as pharmacy or health care tenants with either interior or external entrances. All mall tenants may offer curbside pickup, fulfilled outside of the mall interior, during the yellow phase.

5. Is there a deadline to submit exemption requests?

All exemption requests were required to be submitted no later than 5:00 P.M. on Friday, April 3, 2020.

6. My business is in a category allowed to maintain in-person operations, or I was granted an exemption, what should I do to keep employees safe?

All businesses in all industries and sectors of the economy (including non-profit entities) in the Commonwealth, which are permitted to conduct in-person operations, are required to strictly adhere to the requirements of the Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public, available [here](#), unless they are otherwise more stringently regulated under separate industry-specific guidance.

7. If a business is classified as non-life-sustaining, but has the ability to operate remotely, must the business close down?

Non-life-sustaining businesses in counties that have been designated as being in the Red Phase of Reopening may continue to operate remotely virtually or by telework (i.e. working from home) conducted individually, and in doing so must follow the social distancing and other COVID-19 mitigation guidance provided by the Pennsylvania Department of Health and CDC.

All businesses in counties that have been designated as being in the Yellow Phase of Reopening that have been operating remotely through individual telework of their employees must continue to telework to prevent the spreading of COVID-19 until the stay at home and business closure orders are fully lifted.

All businesses in counties that have been designated as being in the Green phase of Reopening that have been operating remotely through individual telework of their

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employees are strongly encouraged to continue to telework to prevent the spreading of COVID-19 until the stay at home and business closure orders are fully lifted.

8. Local political units were absent from the list. Should municipalities suspend in-person operations?

Local political units are not required to suspend in-person operations but should curtail in-person operations to the extent practicable and follow COVID-19 mitigation guidance provided by the Pennsylvania Department of Health and the CDC. All decisions should appropriately balance public safety while ensuring the continued delivery of critical infrastructure services and functions.

Common Enforcement Questions

9. If a business has been granted an exemption, how can the business demonstrate that fact to an enforcement agency?

Businesses approved for an exemption will receive written confirmation, which they may share with an enforcement agency to confirm authorization to maintain operations.

10. How will this order be enforced? Will there be warnings before fines or other enforcement actions?

The closure of non-life sustaining businesses is a measure that has been taken to control the spread of a communicable disease, COVID-19, and has been ordered by the Governor and the Secretary of Health. The closures are enforceable through criminal penalties, under the Disease Control and Prevention Law of 1955 and the Administrative Code of 1929.

While other criminal penalties in those laws, as well as under the Crimes Code and the Liquor Code, may apply, the following are the most directly applicable provisions for enforcement of the Orders: 71 P. S. § 1409 and 35 P.S. § 521.20(a).

We strive to ensure enforcement of the orders will be consistent throughout the Commonwealth. We also expect that any discipline for violation of the orders will be progressive discipline that begins with a warning to any suspected violator. Furthermore, enforcement should be prioritized to focus on businesses where people congregate.

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11. How should municipalities and local governments exercise their enforcement authority in supporting the Governor's order?

State and local officials should use best judgment in exercising their authorities and issuing implementation directives and guidance. Similarly, critical infrastructure industry partners must use best judgment, informed by the list and CISA Advisory to ensure continued operations of critical infrastructure services and functions. All such decisions should appropriately balance public health and safety while ensuring the continued delivery of critical infrastructure services and functions.

Common Questions About General Business Categories

12. May non-life sustaining business which are required to suspend in-person operations retain essential personnel to process payroll and insurance claims, maintain security, and engage in similar limited measures on an occasional basis?

Yes, but telework (i.e. working from home) should be employed whenever possible, and social distancing must be observed.

13. I requested an exemption, and specifically referenced the portion of my business that supports the health care industry. Does my exemption apply to all my activities?

No. If you received an exemption in response to a request in which you specifically identified a particular element of your business as essential to health care or another life-sustaining operation, that waiver only relates to those activities that you specifically identified.

14. May businesses continue fulfilling mail, phone and online orders?

In-person public facing locations must suspend in-person operations. Mail, phone and online order may continue to be fulfilled by essential staff so long as payment is made by mail, phone or online and the order is delivered to the customer at the customer's home. In fulfilling orders telework should be employed whenever possible, and social distancing must be observed.

15. I am a contractor engaging in emergency repairs who received an exemption or was told that I do not require an exemption. May I perform non-essential work?

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In all counties, construction is permitted as authorized by the Governor's and Secretary of Health's April 20, 2020 amendments to their business closure orders and in strict compliance with the Administration's construction guidance, available [here](#).

16. I have a "one person" operation that operates out of my home, with no customer access or physical facility. May I maintain in-person operations?

Yes. You may continue to work as you have no physical location. In-home businesses in counties designated as being in the Red phase of reopening should suspend any in-person elements in which customers must come to the home business, unless engaged in life-sustaining business.

17. If a manufacturing business is in a classification that is not to maintain in-person operations, but is in the process of converting to a manufacturing process that is authorized to maintain in-person operations in order to address COVID-19, what should they do?

In this particular circumstance, please submit your information to the newly developed [Pennsylvania Manufacturing Call to Action Portal](#). Questions about the Portal can be directed to RA-DCEDPAMCTAP@pa.gov.

Common Questions About Specific Business Categories

18. May I complete my customer's construction project?

In all counties, construction is permitted as authorized by the Governor's and Secretary of Health's April 20, 2020 amendments to their business closure orders and in strict compliance with the Administration's construction guidance, available [here](#).

19. Are childcare programs required to suspend in-person operations?

Childcare programs in Pennsylvania must suspend in-person operations unless they meet one of the following criteria:

- o A Family Child Care Home;
- o A Group Child Care Home operating in a residence;
- o A Child Care Center or Group Child Care Home operating outside a residence that has received a Waiver to provide care for children of employees of life-sustaining businesses from the Department of Human Services, Office of Child Development and Early Learning (OCDEL); or,

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- A Part-day school age program that has received an exemption from the Governor's and Secretary's orders or a waiver to remain open from OCDEL to provide care for children of employees of life-sustaining businesses. As of April 6, 2020, all Waiver requests should be submitted to OCDEL for review.

A map of childcare programs approved to operate in Pennsylvania is available [here](#).

In counties that have been designated as being in the Yellow or Green Phase of Reopening, childcare programs may conduct in-person operations as long as they strictly adhere to guidance..

20. May hotels and motels maintain in-person operations?

Hotels and motels are not required to suspend in-person operations. Hotels may not operate any dine-in food services; all food services must be a takeout or delivery only option.

21. May restaurants, bars, breweries, distillers and wineries continue to provide to-go sales of alcohol?

Restaurants and retail food service businesses located in counties designated as being in the Red phase are permitted to provide take-out and delivery sales only and may not allow the service or consumption of food or beverages on the premises.

Beginning June 5, 2020, restaurants and retail food service businesses located in counties designated as being in the Yellow phase are permitted to provide take-out and delivery sales, as well as dine-in service in outdoor seating areas so long as they strictly adhere to the requirements of the Guidance for Businesses in the Restaurant Industry Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of the Employees and the Public.

All retail food service businesses, including restaurants, and bars located in counties designated as being in the Green phase are permitted to provide take-out and delivery sales, as well as dine-in service in both indoor and outdoor seating areas, so long as they strictly adhere to the requirements of the Guidance for Businesses in the Restaurant Industry Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of the Employees and the Public.

22. May notary and title services maintain in-person operations?

In counties designated as being in the Red or Yellow Phase of Reopening, notary and title offices may maintain in-person operations as required to allow notaries and title service providers to participate in court functions deemed essential by a president judge

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per the Pennsylvania Supreme Court's order of March 18, 2020, or similar federal court directive. Notaries and title service providers may access their offices to effectuate such functions and directives; or for healthcare-related matters.

In addition, notaries who prior to the Governor's and Secretary's orders offered services in a business location that is authorized to maintain in-person operations under the orders (such as banks and other depository financial institutions) may continue to offer in-person services at those locations.

Notaries may also provide services utilizing audio-visual technology as an alternative to in-person notarization as authorized by Senate Bill 841, signed by the Governor on April 20, 2020. Guidance on remote notarization is available [here](#).

In counties that have been designated as being in the Yellow or Green Phase of Reopening, notary and title offices may conduct in-person operations as long as they strictly adhere to the requirements of the Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public (including the requirement [in Yellow Phase counties](#) to telework where possible), available [here](#).

23. May law offices maintain in-person operations?

In counties designated as being in the Red Phase of Reopening, law offices remain generally closed and lawyers and staff should continue to perform all work remotely to the extent possible, however lawyers and staff may access physical offices on a limited basis as necessary to render legal services that cannot practically be completed through the use of advanced communication technology, and which are being rendered to comply with a court directive or deadline, or to meet client needs that are critical to the client's health or safety, including, but not limited to, matters of healthcare, incompetence, incapacitation, end-of-life decision making, government benefits necessary to sustain life and access healthcare and income, or legal functions necessary for the operation of government at all levels. In addition, attorneys involved in real estate closings are authorized to carry out such in-person activity as is permitted under the Pennsylvania Department of State Limited Guidance for Real Estate Professionals, Appraisers, Notaries, Title Companies, and Home Inspectors. Any in-person activity shall be subject to the Orders of Secretary of Health providing for building safety measures (issued April 5, 2020) and business safety measures (issued April 15, 2020), including any amendments, and related Department of Health guidance.

In counties that have been designated as being in the Yellow or Green Phase of Reopening, law offices may conduct in-person operations as long as they strictly adhere

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to the requirements of the Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public (including the requirement [in Yellow Phase counties](#) to telework where possible), available [here](#).

24. May bail bondsmen maintain in-person operations?

In counties designated as being in the Red Phase of Reopening, bail bond offices may maintain in-person operations only as required to allow bail bondsman to participate in court functions deemed essential by a president judge per the Pennsylvania Supreme Court's order of March 18, 2020, or similar federal court directive, and bail bondsmen may access their offices to effectuate such functions and directives.

In counties that have been designated as being in the Yellow or Green Phase of Reopening, bail bond offices may conduct in-person operations as long as they strictly adhere to the requirements of the Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public (including the requirement [in Yellow Phase counties](#) to telework where possible), available [here](#).

25. May pet stores offer in-person ancillary services, such as grooming or training?

In counties designated as being in the Red Phase of Reopening, pet stores may remain open solely to sell pet supplies or provide veterinary services. Pet stores with kennels and pet boarding operations may maintain in-person operations related to these services.

In counties that have been designated as being in the Yellow or Green Phase of Reopening, pet stores may conduct in-person operations as long as they strictly adhere to the requirements of the Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public (including the requirement [in Yellow Phase counties](#) to telework where possible), available [here](#).

26. May appliance stores maintain in-person operations?

In counties designated as being in the Red Phase of Reopening, appliance stores may not maintain in-person sales operations either at their physical locations or off-site, but in-home emergency repairs may continue. See also the notes as to cell phone sale and repair stores below.

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In counties that have been designated as being in the Yellow or Green Phase of Reopening, appliance stores may conduct in-person operations as long as they strictly adhere to the requirements of the Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public (including the requirement in Yellow Phase counties to telework where possible), available [here](#).

27. May golf courses maintain in-person operations?

In counties designated as being in the Red Phase of Reopening, golf course operators may permit individuals access to the property so long as there are no gatherings of any kind and appropriate social distancing of six feet between individuals is strictly abided.

Golf carts may be utilized, but must be single occupant only, unless the occupants share a residence. No employees are allowed for purposes of facilitating play; however, operations such as landscape maintenance and other “services to building and dwellings” may continue as necessary to prevent deterioration of property condition. Restaurant activity is limited to take-out or delivery only and use of facilities for banquets or similar gatherings remains prohibited.

In counties that have been designated as being in the Yellow Phase of Reopening, golf courses may conduct in-person operations as long as they strictly adhere to the requirements of the Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public (including the requirement [in Yellow Phase counties](#) to telework where possible), available [here](#).

28. May marinas maintain in-person operations?

In counties designated as being in the Red Phase of Reopening, marinas, boatyards, and recreational marine manufacturers may provide services where such facilities adhere to strict social distancing and sanitization protocols. Operation of such facilities for the purposes of personal or commercial use or operation of boats or other watercraft is permissible, including rental of boats and houseboats; however, chartered watercraft services (including fishing charters with more than two clients, unless the clients share a residence) remains prohibited. Restaurant activity is limited to take-out or delivery only, and use of facilities for banquets, regattas, or similar gatherings remains prohibited.

In counties that have been designated as being in the Yellow Phase of Reopening, marinas may conduct in-person operations as long as they strictly adhere to the requirements of the Guidance for Businesses Permitted to Operate During the COVID-19

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Disaster Emergency to Ensure the Safety and Health of Employees and the Public (including the requirement [in Yellow Phase counties](#) to telework where possible), available [here](#).

29. I operate as a fishing guide, what in-person operations may continue?

In counties designated as being in the Red Phase of Reopening, walk-in fishing guiding is permitted as long as you are able to minimize personal contact and abide by social distancing and masking guidelines, including maintaining six feet between individuals. Guiding from a boat may be done if you limit clients to two or less and are able to abide by social distancing and masking guidelines, including maintaining six feet between individuals at all times. Charter boat guiding for more than two clients remains prohibited, unless the clients share a residence..

In counties that have been designated as being in the Yellow Phase of Reopening, fishing guides may conduct in-person operations as long as they strictly adhere to the requirements of the Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public (including the requirement [in Yellow Phase counties](#) to telework where possible), available [here](#).

30. May sporting goods, hunting, fishing and tackle stores maintain in-person operations?

In counties designated as being in the Red Phase of Reopening, sporting goods stores, hunting fishing and tackle stores may not maintain in-person operations but may maintain self-service operations.

In counties that have been designated as being in the Yellow and Green Phase of Reopening, sporting goods, hunting, fishing and tackle stores may conduct in-person operations as long as they strictly adhere to the requirements of the Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public (including the requirement [in Yellow Phase counties](#) to telework where possible), available [here](#).

31. May bicycle sale and repair shops maintain in-person operations?

In counties designated as being in the Red Phase of Reopening, bike shops may not maintain in-person sales, but repair work may continue.

In counties that have been designated as being in the Yellow and Green Phase of Reopening, bike sale and repair shops may conduct in-person operations as long as they

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strictly adhere to the requirements of the Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public (including the [in Yellow Phase counties](#) requirement to telework where possible), available [here](#).

32. May firearm dealers maintain in-person operations?

In counties designated as being in the Red Phase of Reopening, firearms dealers may operate physical businesses on a limited basis to complete only the portions of a sale/transfer that must be conducted in-person under the law, subject to the following restrictions: 1) all such sale/transfers will be conducted by individual appointment during limited hours only so as to minimize social interactions and congregating of persons; 2) the dealer will comply with social distancing, sanitization of applicable area between appointments, and other mitigation measures to protect its employees and the public.

In counties that have been designated as being in the Yellow and Green Phase of Reopening, firearms dealers may conduct in-person operations as long as they strictly adhere to the requirements of the Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public, (including the requirement [in Yellow Phase counties](#) to telework where possible) available [here](#).

33. May cell phone sale and repair stores maintain in-person operations?

In counties designated as being in the Red Phase of Reopening, cell phone repair stores may continue to repair cell phones and similar household goods. Electronics and appliance stores and sales kiosks must suspend in-person operations per the Governor's and Secretary's orders.

In counties that have been designated as being in the Yellow and Green Phase of Reopening, cell phone sale and repair stores may conduct in-person operations as long as they strictly adhere to the requirements of the Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public (including the requirement [in Yellow Phase counties](#) to telework where possible), available [here](#).

34. May long-term care providers continue in-person operations?

Yes, all long-term care entities are life-sustaining and are permitted to maintain in-person operations as an individual and family service.

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35. May car dealerships maintain in-person operations?

In counties designated as being in the Red Phase of Reopening, motor vehicle dealers with a valid, current license from the Pennsylvania Department of State's Board of Vehicle Manufacturers, Dealers, and Salespersons who participate in the Pennsylvania Department of Transportation's Online Registration Program (OLRP) may resume limited online sales operations, so long as they strictly adhere to guidance issued by the Pennsylvania Department of Transportation, and social distancing guidance provided by the Department of Health.

Other previously authorized activities at automobile dealerships, such as repairs to passenger and commercial vehicles, may continue.

In counties that have been designated as being in the Yellow and Green Phase of Reopening, vehicle dealerships may conduct in-person operations as long as they strictly adhere to the requirements of the Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public (including the requirement [in Yellow Phase counties](#) to telework where possible), available [here](#).

36. May garden centers maintain in-person operations?

In counties designated as being in the Red Phase of Reopening, garden centers are not authorized to maintain in-person operations, and this applies to both independent garden centers, as well as those attached to large retail chain or grocery stores. This prohibition does not apply to establishments primarily engaged in retailing farm supplies, such as animal (except pet) feed.

In counties that have been designated as being in the Yellow and Green Phase of Reopening, garden centers may conduct in-person operations as long as they strictly adhere to the requirements of the Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public (including the requirement [in Yellow Phase counties](#) to telework where possible), available [here](#).

37. May real estate businesses conduct in-person operations including showings, appraisals, inspections, final walk throughs and closings?

All businesses in the real estate industry, which includes real estate professionals, appraisers, notaries, title companies, settlement service providers, escrow officers,

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home inspectors, mortgage loan originators, processors, and underwriters, and other necessary office personnel including IT professionals, and back office staff necessary to maintain office operations, are permitted to conduct in-person operations so long as they strictly adhere to the requirements of the Guidance for Businesses in the Real Estate Industry Permitted to operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public, available [here](#).

38. May apartment leasing offices maintain in-person operations?

Only emergency housing and emergency maintenance qualify as life-sustaining services in this sector. Virtual and telework operations (e.g. work from home) must be the primary option when available. In counties designated as being in the Red Phase of Reopening, in-person work at a business site is only to be performed on the most limited basis possible to deliver the services or goods of a life-sustaining business.

In counties that have been designated as being in the Yellow or Green Phase of Reopening, apartment leasing offices may conduct in-person operations for properties within the Yellow Phase county, as long as they strictly adhere to the requirements of the Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public (including the requirement [in Yellow Phase counties](#) to telework where possible), available [here](#).

39. May I offer my residential property for short term rental?

In counties designated as being in the Red Phase of Reopening, short term rentals of any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is advertised or held out to the public as a place regularly rented to guests, or which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or rented through a home-share website are not authorized. This prohibition does not apply to the following:

- Hotels, motels, inns, resorts, non-transient public lodging establishments, or time share projects; or
- Rental stays where guests are currently staying in a vacation rental or have previously booked a stay and are scheduled to check-in no later than April 1, 2020; or
- Rentals to persons performing military, emergency, governmental, health or infrastructure response, or travelers engaged in non-vacation commercial activities.

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In counties that have been designated as being in the Yellow or Green Phase of Reopening, residential properties may be offered for short term rental as long as in doing so the owners strictly adhere to the requirements of the Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public (including the requirement [in Yellow Phase counties](#) to telework where possible), available [here](#).

40. May I operate a Game of Skill in my business?

The commonwealth's consistent position is that so-called Games of Skill are illegal gambling devices and not authorized anywhere in the commonwealth. Operation of these machines during the current health emergency encourages people to congregate unnecessarily and is prohibited under the Governor's Order of March 19, 2020. Any business operating, servicing or otherwise maintaining a Game of Skill, is subject to enforcement which may include an order to suspend otherwise authorized in-person operations.

41. May commercial bus lines serving scheduled routes within the commonwealth continue operations?

Intrastate bus operators offering scheduled route service and regulated by the Public Utility Commission as a common carrier must suspend intrastate operations. This requirement does not apply to public transit bus operations.

42. Are there locations currently maintaining in-person operations for the purpose of processing of fingerprints for background checks?

Yes. A list of IdentoGO locations that are maintaining in person operations is available [here](#) More information regarding FBI fingerprint checks is available [here](#).

43. Are lactation consultants considered life sustaining workers?

Yes, Lactation Consultants certified through an accredited board, such as Internationally Board Certified Lactation Consultants (IBCLCs) or Certified Lactation Counselors (CLCs) are life sustaining providers that assess and care for breastfeeding families. Lactation Consultants are life-sustaining workers and may continue practicing during the COVID-19 Stay-at-Home order. Telehealth should still be prioritized when possible, but in person services may continue if social distancing and proper infection control protocols are followed. For more information on [social distancing](#) and [breastfeeding resources](#) during COVID-19, visit the [Department of Health website](#).

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44. May workforce development training programs maintain in-person operations?

The following workforce development training programs may resume statewide: nurse aid and direct care training programs; police academy, and other law enforcement training; emergency medical services (EMS) training; emergency medical technician (EMT) training; and fire training programs. Each program must be structured around ongoing social distancing, universal masking, and/or other public health guidance so as not to result in a spike of cases and new stay-at-home and closure orders.

45. Are religious institutions required to suspend in-person gatherings?

The Governor's and Secretary of Health's Non-Life Sustaining Business Closure Orders (as amended), the Governor's [Process to Reopen Pennsylvania](#) plan, and the Governor's Stay at Home Order are not applicable to religious institutions. However, religious leaders are encouraged to find alternatives to in-person gatherings and to avoid endangering their congregants. While not required for religious gatherings, religious institutions are encouraged to [follow CDC guidelines available here](#).

46. Are public bathing places regulated by the Pennsylvania Department of Health and other community pools permitted to operate during the Governor's phased reopening plan?

Public bathing places and other community pools are permitted to operate in counties in the Yellow and Green phases of the Governor's phased-in reopening plan, provided they follow [CDC guidance for aquatic venues](#) and the Governor's [Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency](#).

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Appendix E

Waiver Application

During the course of the business waiver request program, there were a total of five different versions of the waiver application issued for use by businesses. Each version was modified slightly, including changes to the introductory language, however, the required business information remained the same. It was not until the final version issued on April 1, 2020, that a check box was added for businesses to attest to the accuracy of the information provided on the application along with a question regarding whether the applicant had previously submitted a request for exemption for this business. Issues regarding the versions and design of the waiver application is addressed in detail in *Finding 3*. The five versions of the waiver application are presented below.

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Pennsylvania Department of Community and Economic Development COVID-19 Business Waiver Request Program


March 20, 2020: Original application

Waiver Process for Keeping Physical Locations Open Form

Request for Waiver/Exemption to Business Closure

By the [order of Governor Tom Wolf](#), all non-life sustaining businesses in Pennsylvania are to close their physical locations as of 8 p.m. on March 19 to slow the spread of COVID-19. To request a waiver to keep your location open, please submit the following form. All decisions will be communicated by email and will balance public health, safety, and the security of our industry supply chains supporting life sustaining businesses.

Contact Information

Business Name *	Business Description *
Address 1 *	
Address 2	
City *	State * Please select an option ▼
Zip *	
County * Please select an option ▼	
Contact First Name *	Contact Last Name *
Contact Email *	Contact Phone
Number of Employees? *	
How does it meet life-sustaining definition? (justification)	
Please Explain *	
Does the business have a plan to meet CDC recommended guidelines to maintain employee safety during the COVID-19 pandemic?	
Please Explain *	
How many employees would be in the company's office or physical location in order to do the critical work?	
Please Explain *	
Please Complete the Captcha	
<input type="checkbox"/> I'm not a robot 	
<input type="button" value="SUBMIT"/>	

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Pennsylvania Department of Community and Economic Development COVID-19 Business Waiver Request Program

March 24, 2020: New introductory language


Waiver Process for Keeping Physical Locations Open Form

Request for Waiver/Exemption to Business Closure

Attention: Before requesting a waiver, please read the the [Frequently Asked Questions document available here](#).

By the [order of Governor Tom Wolf](#), all non-life sustaining businesses in Pennsylvania are to close their physical locations as of 8 p.m. on March 19 to slow the spread of COVID-19. To request a waiver to keep your location open, please submit the following form. All decisions will be communicated by email and will balance public health, safety, and the security of our industry supply chains supporting life sustaining businesses.

Contact Information

Business Name *	Business Description *
<input type="text"/>	
Address 1 *	
<input type="text"/>	
Address 2	
<input type="text"/>	
City *	State *
<input type="text"/>	<div>Please select an option ▼</div>
Zip *	
<input type="text"/>	
County *	
<div>Please select an option ▼</div>	
Contact First Name *	Contact Last Name *
<input type="text"/>	<input type="text"/>
Contact Email *	Contact Phone
<input type="text"/>	<input type="text"/>
Number of Employees? *	
<input type="text"/>	
How does it meet life-sustaining definition? (justification)	
Please Explain *	
<input type="text"/>	
Does the business have a plan to meet CDC recommended guidelines to maintain employee safety during the COVID-19 pandemic?	
Please Explain *	
<input type="text"/>	
How many employees would be in the company's office or physical location in order to do the critical work?	
Please Explain *	
<input type="text"/>	
Please Complete the Captcha	
<div><input type="checkbox"/> I'm not a robot </div>	
<div>SUBMIT</div>	

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Pennsylvania Department of Community and Economic Development COVID-19 Business Waiver Request Program

March 27, 2020: Updated introductory language

Waiver Process for Keeping Physical Locations Open Form


Request for Waiver/Exemption to Business Closure

IMPORTANT: If you have already submitted a request, please do not resubmit. Duplicate requests require another level of review and actually slow the process for all. If you have already submitted and received a confirmation email with an ID number, your request is moving through the review process and you will receive a response via email soon. Thank you for your patience.

Attention: Before requesting a waiver, please read the the Frequently Asked Questions document [available here](#).

By the [order of Governor Tom Wolf](#), all non-life sustaining businesses in Pennsylvania are to close their physical locations as of 6 p.m. on March 18 to slow the spread of COVID-19. To request a waiver to keep your location open, please submit the following form. All decisions will be communicated by email and will balance public health, safety, and the security of our industry supply chains supporting life sustaining businesses.

Contact Information

Business Name *	Business Description *		
<div></div>			
Address 1 *			
<div></div>			
Address 2			
<div></div>			
City *	State *	Zip *	
<div></div>	Please select an option ▼	<div></div>	
County *			
Please select an option ▼			
Contact First Name *		Contact Last Name *	
<div></div>		<div></div>	
Contact Email *		Contact Phone	
<div></div>		<div></div>	
Number of Employees? *			
<div></div>			
How does it meet life-sustaining definition? (justification)			
Please Explain *			
<div></div>			
Does the business have a plan to meet CDC recommended guidelines to maintain employee safety during the COVID-19 pandemic?			
Please Explain *			
<div></div>			
How many employees would be in the company's office or physical location in order to do the critical work?			
Please Explain *			
<div></div>			
Please Complete the Captcha			
<div><input type="checkbox"/> I'm not a robot</div> <div>reCAPTCHA</div>			
<div>SUBMIT</div>			

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Pennsylvania Department of Community and Economic Development COVID-19 Business Waiver Request Program

March 31, 2020: Updated introductory language

Waiver Process for Keeping Physical Locations Open Form


Request for Waiver/Exemption to Business Closure

IMPORTANT: Do not submit multiple requests for a waiver. Duplicate submissions will not be reviewed.

Attention: Before requesting a waiver, please read the the [Frequently Asked Questions](#) document [available here](#).

By the [order of Governor Tom Wolf](#), all non-life sustaining businesses in Pennsylvania are to close their physical locations as of 8 p.m. on March 19 to slow the spread of COVID-19. To request a waiver to keep your location open, please submit the following form. All decisions will be communicated by email and will balance public health, safety, and the security of our industry supply chains supporting life sustaining businesses.

Contact Information

Business Name *	Business Description *
Address 1 *	
Address 2	
City *	State * Please select an option ▼
Zip *	
County * Please select an option ▼	
Contact First Name *	Contact Last Name *
Contact Email *	Contact Phone
Number of Employees? *	
How does it meet life-sustaining definition? (justification)	
Please Explain *	
Does the business have a plan to meet CDC recommended guidelines to maintain employee safety during the COVID-19 pandemic?	
Please Explain *	
How many employees would be in the company's office or physical location in order to do the critical work?	
Please Explain *	
Please Complete the Captcha	
<div><input type="checkbox"/> I'm not a robot</div> <div>reCAPTCHA Privacy Terms</div>	
<div>SUBMIT</div>	

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Pennsylvania Department of Community and Economic Development COVID-19 Business Waiver Request Program

April 1, 2020: Additional verification checkbox and question about previous submission

Waiver Process for Keeping Physical Locations Open Form

Request for Waiver/Exemption to Business Closure

IMPORTANT: Do not submit multiple requests for a waiver. Duplicate submissions will not be reviewed.

Attention: Before requesting a waiver, please read the the Frequently Asked Questions document [available here](#).

By the [order of Governor Tom Wolf](#), all non-life sustaining businesses in Pennsylvania are to close their physical locations as of 8 p.m. on March 19 to slow the spread of COVID-19. To request a waiver to keep your location open, please submit the following form. All decisions will be communicated by email and will balance public health, safety, and the security of our industry supply chains supporting life sustaining businesses.

☐ I verify the following information provided in this request for exemption is true and correct to the best of my knowledge and belief. I understand that false statements made herein are subject to the penalties of 18 P.S. C.S. Subsection 4904, relative to unsworn falsification to authorities. *

By completing this form, I acknowledge the following:

- I have read Governor Wolf's Order dated March 19, 2020 to all non-life sustaining businesses and;
- I have read the Secretary of Health's order dated March 18, 2020 to all non-life sustaining businesses and;
- I have reviewed the list of life-sustaining business and;
- I believe my business may require and qualify for a waiver and;
- The information I am submitting is true to the best of my knowledge.

Have you previously submitted a request for exemption for this business site? *

☐ Yes

☐ No

Contact Information

BUSINESS NAME *

BUSINESS DESCRIPTION *

ADDRESS 1 *

ADDRESS 2

CITY *

State *
Please select an option: ▼

ZIP *

COUNTRY *

Please select an option: ▼

Contact First Name *

Contact Last Name *

Contact Email *

Contact Phone *

NUMBER OF EMPLOYEES *

How does it meet life-sustaining definition? (Justification)

Please Explain *

Does the business have a plan to meet CDC recommended guidelines to maintain employee safety during the COVID-19 pandemic?


Please Explain *

How many employees would be in the company's office or physical location in order to do the critical work?

Please Explain *

Please Complete the Captcha

☐ I'm not a robot



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Appendix F

Guidance used by the 50 States in Defining Essential Businesses

According to the National Governors' Association, as of March 23, 2020, in response to the COVID-19 public health emergency, at least 37 governors had taken action to close or recommend closure of nonessential businesses and at least 24 governors had taken formal executive action to implement statewide business closures that designate essential businesses.⁸⁸ Additionally, analysis performed by the MultiState Associates, reported that as of April 13, 2020, Pennsylvania was one of only 13 states that issued their own guidance instead of utilizing the United States Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) guidance.⁸⁹ Even further, Pennsylvania and Delaware were the only two states to issue guidance so specific as to utilize the North American Industry Classification System (NAICS) codes as a component of its determination of what type of businesses could remain open and which had to close.⁹⁰ The following table shows the breakdown of guidance used across the country as of April 13, 2020 according to the MultiState Associates.

⁸⁸ https://www.nga.org/wp-content/uploads/2020/03/Memorandum-on-Overview-of-State-Actions-on-Business-Closure-and-Personal-Movement-Restrictions-in-Response-to-COVID-19_3.25.pdf (accessed August 31, 2020).

⁸⁹ MultiState Associates tracked states that issued Stay-at-Home orders and what businesses were defined as essential in these states during the COVID-19 pandemic, https://docs.google.com/document/d/e/2PACX-1vSXZCFCbIRiRDRC-SWyc36T0S0hjXxT9wZAGM4V01_xtbywLBE0o_kgmfs0dMJ4VbpPh30j2ZFZ3TH/pub (accessed June 26, 2020).

⁹⁰ Ibid.

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Comparison of Guidance Used by States in Defining Essential Businesses Under “Stay-at-Home” Orders as of April 13, 2020		
Guidance Used to Define Essential Businesses	List of States	Total States
Followed CISA Guidance	CA, CT, GA, LA, MD, MI, MT, OK, WA	9
Followed Modified CISA Guidance	AK, AL, DE, FL, HI, ID, IN, MA, ME, MN, MO, MS, NC, NH, NV, OH, SC, TN, TX, WI, WV	21
Issued Their Own Guidance	AZ, CO, IL, KS, KY, NJ, NM, NY, OR, PA, RI, VA, VT	13
Not Applicable - No Stay-at-Home Orders Issued	AR, IA, ND, NE, SD, UT, WY	7
Total States		50

Source: This table was compiled by the staff of the Auditor General from information published by MultiState Associates found at https://docs.google.com/document/d/e/2PACX-1vSXZCFCbIRiRDRC-SWyc36T0S0hjXxT9wZAGM4V01_xtbywLBEn0o_kgmfs0dMJ4VbpPh30j2ZFZ3TH/pub (accessed June 26, 2020). We determined this information to be of undetermined reliability regarding accuracy as noted in Appendix A. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings and conclusions.

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Appendix G

Criteria for Reviewing Waiver Requests

The Pennsylvania Department of Community and Economic Development (DCED) management stated that in addition to the guidance from the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (see *Appendix B*), the *Pennsylvania Industry Operation Guidance* (see *Appendix C*), and the *Life Sustaining Business Frequently Asked Questions* (see *Appendix D*), the below document was developed by DCED on March 20, 2020, to be used by reviewers to assist in determining whether or not to approve a waiver request application.

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Criteria for Reviewing Waiver Requests

In the spreadsheets, when making determinations please **only** use the following labels:

- **NOT REQUIRED** for requests that are clearly life sustaining and/or on one of the two lists (these businesses will receive an email and do not need a waiver or go to the Governor's Office for review)
- **YES** for requests that qualify
- **NO** for requests that have no merit for the purposes of sustaining life
- **?** if there is a real question for the governor's office or another agency

Before beginning, please review and familiarize yourself with the following three documents, which are referred to further below:

1. The updated List of Life-Sustaining and Non-Life-Sustaining Businesses issued by the Governor on Friday March 20th, as subsequently amended ("the Life-Sustaining Business List" or "the List").
2. The ["Identifying Critical Infrastructure During COVID-19" issued by the Department of Homeland Security Cybersecurity and Infrastructure Security Agency \("CISA Advisory"\)](#).
3. The [FAQ](#) on Business Guidance issued by the Governor on Friday March 20th.

When considering a waiver request, first determine the primary activity conducted from the business description, justification, and other information submitted with the waiver request, and if necessary by researching the business online.

Once you have determined the type of business, determine where the business falls on the Life-Sustaining Business List, available [here](#).

The List was developed based on NAICS codes established by the Bureau of Labor Statistics. If you are unsure what category a business requesting a waiver falls within, please review more detailed information about the categories at the [BLS Website or at reliable third party websites such as classcodes.com](#). [There you can get more detailed information about the types of business activities contained in each of the broad categories on the List.](#)

If a business clearly falls within one of the categories in the Life-Sustaining Business List, note "NOT REQUIRED" in the spreadsheet. These businesses will be notified immediately that they are subject to a blanket exemption and can maintain operations.

If the business does not clearly fall within one of the categories allowed by the List, they may be granted a waiver if the business is clearly authorized according to the CISA Advisory, or directly supports the provision of health care.

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The Life-Sustaining Business List largely conforms to the CISA Advisory but in some cases the CISA Advisory authorizes categories of business activity which are not clearly within a category authorized by the List. These CISA Advisory categories include businesses and workers necessary for production, operation and maintenance of supply chains of the following critical infrastructure categories:

- materials and products needed for medical supply chains,
- 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.

Determination of waivers based on the CISA Advisory require careful exercise of discretion by reviewers, particularly in the case of manufacturing, construction and services businesses which have applied for a waiver based on being part of the supply chain to critical infrastructure as defined in the CISA Advisory. To determine whether a waiver should be granted, you need to evaluate whether the primary activity conducted by the business is essential to the critical infrastructure categories listed above, and detailed in the Governor's order and the Life-Sustaining Business List.

An example of this from the CISA Advisory is the category "Critical Manufacturing" which includes the following broad categories:

Workers necessary for the manufacturing of materials and products needed for medical supply chains, 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.

In evaluating waivers submitted based on being an essential part of a supply chain to a life-sustaining business, please consider the following questions:

- Does the product or service play an essential role in the supply chain of goods and services critical to sustain life?
- Is the product or service that the business provides to another life sustaining business clearly the primary activity of the business, or secondary (as in the case of businesses which sell products to a wide variety of clients, including, in some limited cases, those in the health care or defense sectors)?

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- Does granting the waiver meet Governor Wolf's intent to support health and safety of residents during this health emergency?
- Are we being consistent in the application of the criteria?

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Appendix H

Distribution List

This report was distributed to the following Commonwealth officials:

The Honorable Tom Wolf
Governor

The Honorable Dennis M. Davin
Secretary
Pennsylvania Department of
Community and Economic Development

The Honorable Denise Remillard
Special Assistant to the Secretary
Pennsylvania Department of
Community and Economic Development

The Honorable Elena Cross
Chief of Staff
Office of the Governor

The Honorable David Millard
Majority Chair
House Tourism and Recreational
Development Committee

The Honorable Mary Jo Daley
Democratic Chair
House Tourism and Recreational
Development Committee

The Honorable John Yudichak
Chair
Senate Community, Economic and
Recreational Development Committee

The Honorable Amanda Cappelletti
Democratic Chair
Senate Community, Economic and
Recreational Development Committee

The Honorable Gregory Thall
Secretary of the Budget
Office of the Budget

The Honorable Stacy Garrity
State Treasurer
Pennsylvania Treasury Department

The Honorable Josh Shapiro
Attorney General
Office of the Attorney General

The Honorable Michael Newsome
Secretary of Administration
Office of Administration

Mr. William Canfield
Director
Bureau of Audits
Office of Comptroller Operations

Ms. Mary Spila
Collections/Cataloging
State Library of Pennsylvania

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