



The Bottom Line

AUGUST 2020 | VOL. 51

FEMA UPDATES THE PPE EXPORT BAN

Summary

On April 10, 2020, the Federal Emergency Management Agency (FEMA) published a directive halting the export of five types of personal protective equipment (PPE) from the United States without explicit approval. The directive was authorized by the President under the Defense Production Act (50 U.S.C 4511(a)) which gives him the authority to allocate materials, services, and facilities as he shall deem necessary or appropriate to promote the national defense.

That order has been extended to December 31, 2020.

- Exports by Non-profit or Non-governmental Organizations for donation to foreign charities for free distribution;
- Intra-Company transfers by U.S. Companies' domestic facilities to affiliated foreign facilities;
- Materials exported for assembly into medical kits destined for the United States;
- Sealed, sterile kits where the covered materials are only a constituent;
- Diplomatic shipments;
- Shipments to U.S. Military addresses or Embassies, or on behalf of the U.S. Federal Government;
- Shipments in-transit through the United States en-route to foreign destinations; or
- Shipments exported to Canada or Mexico.

Under this temporary rule, before any shipments of such covered materials may leave the United States, CBP will detain the shipment temporarily, during which time FEMA will determine whether to direct it for domestic use or allow the export in part or in whole. A letter of attestation is required in order to export under a published exemption. The letter should be submitted through CBP's document imaging system (DIS) with other documents related to the export, and contain the following:

- A description of the type and quantity of covered materials,
- Which exemption the exporter is claiming,
- Any related information supporting that exemption,
- The expected end use of the exported materials, and
- A certification that the information contained is true and accurate to the best of the exporter's knowledge.

Impact

Under this order, FEMA may purchase all or part of the shipment, may redirect the shipment for domestic distribution, or may allow the export to proceed as planned. FEMA has indicated that not every shipment of covered materials will be detained, whether or not it is being exported under an exemption, and that the enforcement is directed at shipments valued at \$2500 or more and consisting of more than 10,000 units.

RESOURCES:

- [Prioritization and Allocation of Scarce Medical Resources](#) (Federal Register)
- [EXIM Board Resolution- April 14, 2020](#) (EXIM.gov)
- [Implementation of Allocation Order on Exports of Scarce PPE](#) (FEMA)
- [FEMA Extends and Narrows Restrictions on Exports of Scarce PPE](#) (GCLF)

Background

As of August 12, 2020, there were over five million confirmed cases of COVID-19 in the United States, resulting in over 160,000 deaths. At this time, there is no vaccine that can prevent infection of COVID-19, nor is there any FDA-approved post-exposure prophylaxis for people who may have been exposed to COVID-19. Treatment is currently limited to supportive (or palliative) care for patients who need it. In support of everyone continuing to be exposed to the novel coronavirus at home, in their community, or in the course of their work, the President has exercised authority to limit the exports of:

- Surgical masks which act as a barrier to fluids and particulates,
- Surgical (not industrial) N95 filtering facepiece respirators (including disposable particulate respirators),
- Level 3 and 4 Surgical gowns and isolation gowns, and
- Surgical or exam gloves.

The list of restricted commodities has been updated since the initial announcement in April. The original list included all N95 masks and elastomeric air-purifying respirators. While this revised list has limited the scope regarding these masks, it has also added the surgical and isolation gowns, which were not part of the initial order.

Current Status

Exports will only be permitted under the following conditions:

- The exporter has continuous orders for covered materials since January 1, 2020, which consist of no more than 20% of their domestic production (3M Company);
- Shipments to U.S. Commonwealths and Territories, including Guam, American Samoa, Puerto Rico, the U.S. Virgin Islands and the Northern Marianas Islands;