



The Bottom Line

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PPE EXPORT BAN PARTIALLY WITHDRAWN

Summary

The Federal Emergency Management Agency (FEMA) on June 14 has announced additional exemptions to the export ban on personal protective equipment (PPE).

Background

On April 10, 2020, the Federal Emergency Management Agency 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. Exports of these materials was permitted only with explicit approval by FEMA. In August of 2020 and December of 2020, the list of products covered by this export ban was modified and expanded. The revised list added surgical and isolation gowns, and specific syringes and hypodermic needles which were not part of the initial orders.

Current Status

FEMA is now modifying the export ban to reflect current domestic supply needs of medical resources to promote the national defense. The temporary final rule, as modified, will remain in effect until June 30, 2021.

The following items are no longer restricted from export under the FEMA's Temporary Final Rule (TFR):

- Industrial N95 Respirators, including devices that are currently NIOSH approved for use in healthcare settings.
- PPE Surgical Masks, including masks that cover the user's nose and mouth providing a physical barrier to fluids and particulates.
- Piston syringes that allow for the controlled and precise flow of liquids.

- Hypodermic single lumen needles that have engineered sharps injury protections.

The following items are still subject to the FEMA export ban:

- Surgical N95 Respirators
- Nitrile gloves and exam gloves
- Surgical Gowns and Surgical Isolation Gowns

Impact

Due to an increase in vaccinations, confirmed COVID-19 cases and hospitalizations have been falling, and domestic supply of the allocated PPE has kept pace with demand. Despite the decrease in demand for PPE, the rule requires U.S. Customs and Border Protection (CBP) to notify FEMA of an intended export of covered materials. CBP must temporarily detain any shipment of such covered materials pending the Administrator's determination whether to return for domestic use, issue a rated order for, or allow the export of part or all of the shipment.¹ In making such determination, the Administrator may consult other agencies and will consider the totality of the circumstances, including: (1) The need to ensure that scarce or critical items are appropriately allocated for domestic use; (2) minimization of disruption to the supply chain, both domestically and abroad; (3) the circumstances surrounding the distribution of the materials and potential hoarding or price-gouging concerns; (4) the quantity and quality of the materials; (5) humanitarian considerations; and (6) international relations and diplomatic considerations.

RESOURCES

[Notice of Product Exclusion Extensions and Additional Modifications](#) (Federal Register)

[Prioritization and Allocation of Certain Scarce and Critical Health and Medical Resources for Domestic Use](#) (Federal Register)

[Export Allocation Rule on Medical Supplies and Equipment for COVID-19](#) (FEMA)