

## FEMA Issues Further Guidance on PPE Exports

In an Alert published on April 10, we discussed temporary restrictions that the Federal Emergency Management Agency (FEMA) had placed on the export from the United States of certain personal protective equipment (PPE). FEMA determined that restrictions on certain types of respirators, masks, and gloves were necessary to ensure adequate supplies for the domestic response to the COVID-19 pandemic. In conjunction with the FEMA notice, U.S. Customs and Border Protection (CBP) published a guidance memorandum to its field operations directors confirming that enforcement of the temporary rule would be limited to commercial quantities (defined as quantities valued at more than \$2,500 and containing more than 10,000 units of equipment). CBP also identified several exemptions from the temporary rule.

On April 21, FEMA published further guidance that described 10 categories of PPE exports that would be exempt from the ban. We note that some of these restate and expand upon the exemptions published by CBP, but there is no indication that they are intended to supersede the CBP guidance. Accordingly, although the CBP guidance was never officially noticed in the Federal Register, it appears that the FEMA notice should be read in conjunction with the CBP memorandum.

The recent FEMA exemptions include:

1. Shipments to U.S. commonwealths and territories, including Guam, American Samoa, Puerto Rico, U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.
2. Exports by nonprofit or non-governmental organizations that are solely for donation to foreign charities or governments for free distribution (i.e., not for sale).
3. Intracompany transfers by U.S. companies from domestic facilities to company-owned or affiliated foreign facilities.
4. Shipments that are exported solely for assembly in medical kits and diagnostic testing kits destined for U.S. sale and delivery.
5. Sealed, sterile medical kits and diagnostic testing kits where only a portion of the kit is made up of one or more covered materials that cannot be easily removed without damaging the kits.
6. Diplomatic shipments from foreign embassies and consulates to their home countries.
7. Shipments to overseas U.S. military addresses, foreign service posts (e.g., diplomatic post offices), and embassies.
8. Shipments in transit through the United States with a foreign shipper and consignee, including shipments temporarily entered into a warehouse or temporarily admitted to a foreign trade zone.
9. Shipments for which the final destination is Canada or Mexico.
10. Shipments by or on behalf of the U.S. federal government, including its military.

FEMA further advised that, for exemptions two, three, four, eight, and nine, exporters will be required to file a letter of attestation through CBP's document imaging system certifying the purpose of the shipment. The letter should include:

- A description of which exemption(s) the exporter is claiming;
- Details regarding the shipment that are sufficient for the CBP and FEMA officials to determine whether the shipment falls under the claimed exemption(s); and
- A statement that the provided information is true and accurate to the best of the exporter's knowledge, and that the exporter is aware that false information is subject to prosecution under the Defense Production Act.

Per the prior guidance, the temporary export ban is expected to remain in effect until at least



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### Related Practice Areas

- Trade Regulation, Export Controls & Sanctions
- Transportation & Trade

August 10, 2020, and unless an exemption applies, no shipments of covered materials may leave the United States without FEMA approval.

We are continuing to monitor the FEMA and CBP requirements and will advise further when changes are announced.

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