

COVID-19 Supply Chain and Trade Update

Written by Gwendolyn Wilber Jaramillo, Anna Maria Annino

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Included in this Issue:

- [FEMA Publishes Exemptions to Recent Personal Protective Equipment Export Limits Rule](#)
- [CBP Directs Questions to New Webpage for the Import of Medical Supplies](#)
- [New Executive Order Authorizes Postponement of Certain Import Payments; 90 Day Extension Granted for Importers with Financial Hardship Except for Section 201 and 301 Duties](#)
- [U.S. Postal Service Temporarily Suspends Mail to Certain Foreign Countries](#)
- [Office of Foreign Assets Control \(OFAC\) Updates](#)
- [FEMA Issues Advisories on Defense Production Act, Project Airbridge, and Best Practices](#)

FEMA Publishes Exemptions to Recent Personal Protective Equipment Export Limits Rule

On Friday, April 17, 2020, the Federal Emergency Management Agency (FEMA) released a list of exemptions to the previously published temporary rule which prohibited the export of certain personal protective equipment (PPE), discussed below. The ten exemptions, which were published in the [Federal Register](#) on April 21, 2020, are:

1. Exports to U.S. commonwealths and territories;
2. Exports by non-profits or NGOs that are used for donations to foreign charities and governments for free distribution;
3. Intracompany transfers from U.S. companies to their owned or affiliated foreign facilities;
4. Exports of materials intended solely to be used for in assembling medical diagnostic/testing kits, where the U.S. is the final destination for the assembled kits;
5. Exports of sealed, sterile medical diagnostic/testing kits where the kit contains materials that cannot be easily removed without damaging the kits;
6. Diplomatic exports from foreign embassies and consulates to their home countries;
7. Shipments to overseas U.S. military addresses, foreign service posts, and embassies;
8. In-transit merchandise with a foreign shipper and consignee, such as shipments temporarily entered into a warehouse or foreign trade zone;
9. Exports with Canada or Mexico as the final destination; and
10. Shipments by or on behalf of the U.S. federal government (including military shipments).

Exporters who wish to rely on the above exemptions numbered 2, 3, 4, 8, or 9 must provide a letter submitted to Customs and Border Protection (CBP) with the following information: (1) a description of which exemption(s) the exporter is claiming; (2) 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 (3) 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 (DPA).

Background: New FEMA Rule Prohibits the Export of Facemasks and Protective Equipment

Earlier, on April 10, 2020, FEMA [issued a temporary rule](#) to allocate specified scarce or threatened materials for domestic use due to the COVID-19 pandemic. This new rule prohibits the export of these materials from the U.S. without explicit approval by FEMA. The rule will be in effect until August 10, 2020, and FEMA may designate additional materials as covered under this rule at any time. The items that are currently prohibited for export are:

1. N95 Filtering Facepiece Respirators;
2. Other Filtering Facepiece Respirators (e.g., those designated as N99, N100, R95, R99, R100, or P95, P99, P100);
3. Elastomeric, air-purifying respirators and appropriate particulate filters/cartridges;
4. PPE surgical masks; and
5. PPE gloves, surgical gloves, exam gloves, and such gloves intended for the same purpose.

CBP is instructed to detain any attempted exports of the restricted items and to notify FEMA of the intended export. The items will be detained while FEMA determines "within a reasonable timeframe" whether to return the items for domestic use, issue a rated order for the items, or allow the full or partial export of the items if an exemption applies.

FEMA will base its determination of whether the covered items should be purchased by FEMA or allocated for domestic use based on consultation with other agencies, as well as a "totality of the circumstances" evaluation, including (1) the need to ensure that scarce or threatened 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.

The rule contains a single exemption: for the export of covered materials made by U.S. manufacturers with continuous export agreements with customers in other countries since at least January 1, 2020, so long as at least 80 percent of such manufacturer's domestic production of covered materials was distributed in the U.S. in the preceding 12 months. The purpose of this exemption is to "limit the impact of this order on pre-existing commercial relationships, in recognition of the importance of these commercial relationships to the international supply chain, and for humanitarian reasons, in consideration of the global nature of the COVID-19 pandemic."

FEMA may seek an injunction if the agency believes that restricted items may be exported in violation of this new rule. Failure to comply is a criminal offense punishable by a fine of not more than \$10,000 or imprisonment for not more than one year, or both.

CBP Directs Questions to New Webpage for the Import of Medical Supplies

On April 14, 2020, Customs and Border Protection (CBP) [announced](#) that due to a high volume of inquiries, CBP is directing all questions related to the pandemic to the [COVID-19 Relief Imports Web Portal](#). This webpage is designed to address inquiries related to the importation of medical supplies to combat the COVID-19 virus and should be used rather than the COVID-19 Relief Imports email address to contact the COVID-19 Cargo Resolution Team (CCRT).

New Executive Order Authorizes Postponement of Certain Import Payments; 90 Day Extension Granted for Importers with Financial Hardship Except for Section 201 and 301 Duties

On April 16, 2020, President Trump issued a new [Executive Order](#) pursuant to the National Emergencies Act that grants the Secretary of the Treasury the authority temporarily extend payment deadlines, for importers suffering "significant financial hardship because of COVID-19."

On April 20, 2020, CBP [announced that](#) pursuant to the new Executive Order, the deadline for certain duties, taxes, and fees will be postponed for 90 days if the importer is “experiencing a significant financial hardship due to the coronavirus disease.” Significant financial hardship means that the importer:

1. Has fully or partially suspended operations during March 2020 or April 2020 due to orders from a competent governmental authority limiting commerce, travel, or group meetings due to COVID-19, and
2. As a result of such suspension, the gross receipts of such importer for March 13-31, 2020 or April 2020 are less than 60 percent of the gross receipts for the comparable period in 2019.

Importers should note that documentation of this criteria does not need to be filed with CBP to be eligible for this relief, but that the importer seeking relief must maintain documentation as CBP may conduct a review at a future date to ensure compliance with the requirements.

This temporary postponement applies only to formal entries of merchandise entered, or withdrawn from warehouse, for consumption (including entries for consumption from a Foreign Trade Zone) in March or April of 2020. Any already paid deposits will not be returned. In addition, this postponement does not apply to merchandise subject to antidumping duties; countervailing duties, duties assessed pursuant to Section 232 of the Trade Expansion Act of 1962; and duties assessed pursuant to Section 201 or 301 of the Trade Act of 1974.

U.S. Postal Service Temporarily Suspends Mail to Certain Foreign Countries

Effective April 17, 2020, the U.S. Postal Service (USPS) has [temporarily suspended mail](#) to certain foreign countries due to the pandemic, excluding diplomatic and military mail. The suspensions are either due to the foreign postal service suspending their own postal services (such as in Panama, South Africa, India, and Peru) or due to the unavailability of transportation of mail (such as in the UAE, Kenya, Costa Rica, and Laos). USPS customers are asked to refrain from mailing items addressed to these countries, which are [listed here](#), as they will not be delivered. On the request of the Department of State, diplomatic mail service to certain foreign ZIP codes is also suspended as of April 8, 2020. The list also includes additional destinations that are no longer accepted for Global Express Guarantee mail as of April 14, 2020.

Office of Foreign Assets Control (OFAC) Updates

Compliance Action Notice Encourages Outreach to OFAC

On April 20, 2020, OFAC [released a recent action notice](#) titled “Encouraging Persons to Communicate OFAC Compliance Concerns Related to the Coronavirus Disease 2019 (COVID-19).” The notice explains expecting any potential delays related to COVID-19 when meeting OFAC deadlines should contact OFAC immediately, such as delays involving filing blocking and reject reports, responses to administrative subpoenas, and reports required by general or specific licenses, or any other required reports or submissions. OFAC also encourages persons to submit self-disclosures to the following e-mail account rather than through physical mail at OFACdisclosures@treasury.gov. Please also refer to OFAC’s [Data Delivery Standards](#) for detailed electronic submission guidance.

New Factsheet on Humanitarian Aid, But No Changes to Existing Sanctions

On April 16, 2020, OFAC published a [fact sheet](#) that summarizes existing exemptions and authorizations to provide humanitarian assistance in the context of the [Iran](#), [Venezuela](#), [North Korea](#), [Syria](#), [Cuba](#), and [Ukraine/Russia-related](#) sanctions programs. Members of the export community should note that these sanction regimes and their respective exemptions have not been suspended or altered in response to the pandemic – rather, this factsheet explains the preexisting exemptions for humanitarian aid and medical supplies.

FEMA Issues Advisories on Defense Production Act, Project Airbridge, and Best Practices

On April 14, 2020, FEMA issued an advisory on the application of the Defense Production Act (DPA) to the COVID-19 pandemic. The advisory explains that the DPA provides the authorization for the [four-pronged approach](#) used by FEMA and the Department of Health and Human Services (HHS) to address the shortage of medical supplies, increase the current domestic supply, and expand domestic production of medical supplies and equipment for the future. As stated in their advisory, “[p]riority rated DPA orders do not create a situation of ‘outbidding;’ rather, it puts the federal government requirement to the ‘front of the line’ for fulfillment ahead of other orders.” More information on how the DPA enables FEMA and HHS to allocate resources is available in this [Fact Sheet](#).

On April 13, 2020, FEMA released the following advisories to help inform the public about their response to the pandemic:

FEMA Project Airbridge Advisory

FEMA created [Project Airbridge](#) to reduce the amount of time it takes for U.S. medical supply distributors to get commercially sourced and procured PPE and other critical supplies into the country for U.S. recipients. Through Project Airbridge, FEMA is covering the cost to fly supplies into the U.S. from overseas factories. As part of the current agreement with distributors, 50 percent of the supplies on each plane are directed by the distributors to customers within “hotspot” areas with the most critical needs for those supplies. HHS and FEMA determine hotspot areas based on Center for Disease Control (CDC) data. A video on Project Airbridge is also available on [FEMA website](#).

Personal Protective Equipment Preservation Best Practices Fact Sheet

This [Fact Sheet](#) summarizes best practices for national implementation to sustain PPE while ensuring the protection of front-line workers during the pandemic response. The objective of the strategy is to ensure protection against COVID-19 for healthcare workers, first responders, and patients by implementing “three pillars of practice” – reduce, reuse, and repurpose – and giving examples of how each can be accomplished.

International Reagent Resource Advisory

The International Reagent Resource (IRR) provides resources for surveillance of and detection of influenza and other respiratory pathogens to laboratories. The IRR acquires, authenticates, and produces reagents (substances used in testing chemical reactions) that scientists use to conduct research and develop improved diagnostic tests, vaccines, and detection methods. The COVID-19 Federal Interagency Task Force is expanding items supplied by the IRR to help public health labs access supplies needed for COVID-19 testing free of charge, such as swabs, reagents and other diagnostic testing supplies. For more information, see the advisory [here](#).

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