

CLIENT ALERT

FEMA Extends and Narrows Restrictions on Exports of Certain Scarce PPE

August 7, 2020

On August 10, the Federal Emergency Management Agency (FEMA), under the Department of Homeland Security, will be extending and revising a [Temporary Final Rule](#) (first issued in April this year) that invokes the Defense Production Act (DPA) to allocate certain Personal Protective Equipment (PPE) for domestic use and prohibit exportation of that PPE from the U.S. without express FEMA approval. The revised and extended rule will be effective from August 10 through December 31, 2020 and authorizes Customs and Border Protection to detain outbound shipments of PPE until FEMA determines whether to return the shipment for domestic use, issue a DPA-covered order against the PPE, or allow the export of all or part of the order in the interest of national defense. Importantly, the revised rule amends the definition of covered PPE (“covered material”) to account for domestic supply and demand changes since April and now includes only:

- Surgical (not industrial) N95 Filtering Facepiece Respirators (FFRs) (narrowed in scope compared to the original rule that included all N95 FFRs)
- PPE Surgical Masks (same as the original rule)
- Level 3 and 4 Surgical Gowns and Surgical Isolation Gowns (new addition)
- PPE Gloves or Surgical Gloves (same as original rule)

The rule removes other FFRs; elastomeric, air-purifying respirators; and related FFR filters/cartridges from the covered material list. It continues the exemptions in the original rule and those supplemental exemptions published after the initial rule which permit the export of covered material under limited circumstances. FEMA published a [fact sheet](#) in April describing the exemptions and providing additional information with respect to submission of the letter of attestation required to claim certain exemptions.

For additional information on the allocation rule, see our April 8 publication, [“FEMA Allocates Certain Scarce PPE for Domestic Use and Restricts Exports.”](#)

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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