
COVID-19: US Government Provides Further Guidance on Export Restrictions on PPE

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On April 9, 2020, US Customs and Border Protection (CBP) issued a Memorandum to its field operators providing guidance on the implementation of the US Federal Emergency Management Agency's (FEMA) Temporary Final Rule (TFR) restricting exports of personal protective equipment (PPE). As detailed in a previous [WilmerHale client alert](#), FEMA's rule applies to five types of medical products, including several types of respirators, surgical masks, and gloves, and requires that "[a]ll shipments of covered materials ... shall be allocated for domestic use, and may not be exported from the United States without explicit approval by FEMA." The CBP Memorandum narrows the scope of the TFR.

Pursuant to the CBP Memorandum, CBP field operators conducting reviews of export shipments are required to apply the TFR's restrictions to shipments containing "commercial quantities," which CBP defines as shipments that (i) are valued at \$2,500 or more and (ii) contain more than 10,000 units of gloves, masks or other subject commodities.

The Memorandum also states that the following types of shipments are excluded from the TFR's restrictions:

- Exports to Canada or Mexico;
- Exports by US government agencies and exports to US government entities (e.g., US military bases overseas);
- Exports by US charities;
- Exports by critical infrastructure industries for the protection of their workers;
- Exports by 3M Company; and
- In-transit shipments.

Although CBP could subsequently change its policies regarding the application of the restrictions on exports of PPE, the Memorandum indicates that any shipments not meeting the commercial quantities criteria will not be detained or delayed and that exports of commercial quantities will likewise not be impeded if they meet the identified exclusions.

WilmerHale continues to monitor these and other regulatory developments enacted by governing

bodies worldwide in the face of the COVID-19 pandemic. WilmerHale has also assembled a [task force](#) of legal authorities across the wide array of disciplines implicated by the outbreak of COVID-19 that stands ready to assist clients as they develop legal and operational plans and protocols.

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