



# FedEx Regulatory Alerts & Updates

## **Regulatory Alert: FEMA Notification of Exemptions to Temporary Final Rule**

April 22, 2020

### **BACKGROUND**

The Coronavirus (COVID-19) pandemic has resulted in a scarcity of personal protective equipment (PPE) in the U.S. A Presidential Memorandum was issued on April 3, 2020, and a Federal Emergency Management Agency (FEMA) "Notification of Exemptions" was published in the Federal Register on April 21, 2020, addressing the final list of articles NOT included in the export review.

### **WHAT ARE THE DETAILS OF THE NOTIFICATION OF EXEMPTIONS POSTING?**

FEMA published an amended and more detailed list of ten shipment scenarios that have been allowed an exemption to the PPE export review.

This "PPE export review" process is already effective and ongoing at all U.S. ports of exit. This export review action will continue until August 10, 2020. Customs and Border Protection (CBP) personnel at all U.S. ports of exit are actively reviewing export shipment details to segregate any PPE that is considered scarce or threatened. However, the ten exemptions cited below will not be reviewed if the conditions for exemption are met.

The key condition to be met is that FEMA will require a Letter of Attestation (LOA) to be submitted via CBP's Document Imaging System for exemptions (2), (3), (4), (8) and (9) cited below. This LOA is to certify to FEMA the purpose of the shipment of covered materials. The LOA should be submitted to CBP with other documentation related to the shipment.

The LOA should contain 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)
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 DPA as outlined in the allocation order

Exporters who have concerns about how to file this letter of attestation for their FedEx Express export shipment should reference Q&A #6 below.

Here are the ten specific updated exclusions FEMA has determined to be exempt from the PPE export review:

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 (including minor outlying islands)
2. Exports of covered materials by non-profit or non-governmental organizations that are solely for donation to foreign charities or governments for free distribution (not sale) at their destination(s) (LOA required)
3. Intracompany transfers of covered materials by U.S. companies from domestic facilities to company-owned or affiliated foreign facilities (LOA required)
4. Shipments of covered materials that are exported solely for assembly in medical kits and diagnostic testing kits destined for U.S. sale and delivery (LOA required)
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. Declared 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. In-transit merchandise: shipments in transit through the U.S. with a foreign shipper and consignee, including shipments temporarily entered into a warehouse or temporarily admitted to a foreign trade zone (LOA required)
9. Shipments for which the final destination is Canada or Mexico (LOA required)
10. Shipments by or on behalf of the U.S. federal government, including its military

As a reminder, here are the five PPE articles that are subject to this restriction:

1. N95 Filtering Facepiece Respirators, including devices that are disposable half-face-piece non-powered air-purifying particulate respirators intended for use to cover the nose and mouth of the wearer to help reduce wearer exposure to pathogenic biological airborne particulates
2. Other Filtering Facepiece Respirators (e.g., those designated as N99, N100, R95, R99, R100, or P95, P99, P100), including single-use, disposable half-mask respiratory protective devices that cover the user's airway (nose and mouth) and offer protection from particulate materials at an N95 filtration efficiency level per 42 CFR 84.181
3. Elastomeric, air-purifying respirators and appropriate particulate filters/cartridges
4. PPE surgical masks, including masks that cover the user's nose and mouth and provide a physical barrier to fluids and particulate materials
5. PPE gloves or surgical gloves, including those defined at 21 CFR 880.6250 (exam gloves) and 878.4460 (surgical gloves) and such gloves intended for the same purposes

## **Q&A**

**Q1: What criteria does FEMA use to make the decision on allowing a specific PPE shipment to be exported or not?**

A1: FEMA considers the totality of circumstances in making a decision 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
6. International relations and diplomatic considerations

**Q2: If FEMA decides to NOT allow a given shipment of PPE articles to be exported, what actions are taken?**

A2: FEMA may review shipments of covered materials and, subject to certain exemptions, determine whether to (1) purchase some or all the shipment through a Defense Protection Act priority-rated order or (2) return some or all the shipment for domestic use.

**Q3: What if customers fail to include the Letter of Attestation (LOA) in their shipment paperwork required for the five shipment exclusion types cited above?**

A3: FEMA has deemed the LOA as a required document for the specific exclusion. Failure to include it could lead to the shipment being held for review purposes.

**Q4: Are all these exemptions in place for the duration of this PPE export review action?**

A4: FEMA may waive any of these exemptions at any time and fully review shipments of covered materials under 44 CFR 328.102(b) if it is determined that doing so is necessary or appropriate to promote the national defense.

**Q5: Are any export shipments exempted based on low value or number of items in the shipment?**

A5: There is not an exemption based on shipment value or number of items in a shipment. Low value export shipments can be reviewed like any other export shipment under this process.

**Q6: How can I submit my Letter of Attestation (LOA) to my FedEx export shipment?**

A6: It is recommended shippers email the LOA to [docs@cbp.dhs.gov](mailto:docs@cbp.dhs.gov). Successful submissions will receive an automated submission status email indicating success or failure. Also, as a failsafe, it is recommended shippers include a copy of the LOA with the commercial invoice and other shipment documentation.

## **RESOURCES**

April 21 FEMA Federal Register "Notification of Exemptions"

<https://www.govinfo.gov/content/pkg/FR-2020-04-21/pdf/2020-08542.pdf>

U.S. Customs and Border Protection CSMS #42439611

[https://content.govdelivery.com/bulletins/gd/USDHSCBP-28793bb?wgt\\_ref=USDHSCBP\\_WIDGET\\_2?utm\\_source=csms.cbp.gov&utm\\_medium=csms.cbp.gov&utm\\_term=undefined&utm\\_content=undefined&utm\\_campaign=\(not%20set\)&gclid=undefined&dclid=undefined&GAID=1485270042.1545403577](https://content.govdelivery.com/bulletins/gd/USDHSCBP-28793bb?wgt_ref=USDHSCBP_WIDGET_2?utm_source=csms.cbp.gov&utm_medium=csms.cbp.gov&utm_term=undefined&utm_content=undefined&utm_campaign=(not%20set)&gclid=undefined&dclid=undefined&GAID=1485270042.1545403577)