Hi @first_name@,

Today, the Federal Emergency Management Agency (FEMA) issued a Temporary Final Rule on "Prioritization and Allocation of Certain Scarce or Threatened Health and Medical Resources for Domestic Use." This FRN was issued pursuant to two Presidential actions: 1) Executive Order 13910 on Preventing Hoarding of Health and Medical Resources To Respond to the Spread of COVID–19 issued March 23, 2020; and 2) Memorandum on Allocating Certain Scarce or Threatened Health and Medical Resources to Domestic Use issued on April 3, 2020.

Here are the key provisions of the rule:

- The rule is effective for 120 days
- Scarce or threatened materials include:
  - N95 Filtering Facepiece Respirators;
  - Other Filtering Facepiece Respirators (N99, N100, R95, R99, R100 or P95, P99, P100);
  - Elastomeric, air-purifying respirators and appropriate particulate filters/cartridges;
  - PPE surgical masks, including masks that cover the user’s nose and mouth and provide a physical barrier to fluids and particulate materials; and
  - PPE gloves or surgical gloves.
These items are allocated for domestic use and may not be exported from the U.S. without explicit approval by FEMA.

- Before any shipments of such covered materials may leave the United States, CBP will detain the shipment temporarily, during which time FEMA will determine whether to return for domestic use, issue a rated order for, or allow the export of part or all of the shipment under section 101(a) of the Act, 50 U.S.C. 4511(a).
- FEMA will make such a determination within a reasonable time of being notified of an intended shipment and will make all decisions consistent with promoting the national defense.
- FEMA will work to review and make determinations quickly and will endeavor to minimize disruptions to the supply chain.
- FEMA may consult other agencies and will consider the totality of the circumstances, including the following factors:
  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.
- FEMA will implement this rule with the cooperation and assistance of other U.S. Government agencies, including CBP, and will work with manufacturers, brokers, distributors, exporters, and shippers to ensure that the applicable requirements are carried out.
- Any covered materials intended for export may be detained by CBP while FEMA conducts its review of the shipment. FEMA will review the shipment and provide notification as soon as possible regarding the disposition of the covered materials under this order, provided that any goods that have been detained by CBP and are subsequently made subject to a DPA-rated order will be consigned to FEMA pending further distribution or agency direction.
- FEMA may seek an injunction or other order whenever, in the Administrator's judgment, a person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the Act or any rule or order issued thereunder.
- In addition to an injunction, failure to comply fully with this rule is a crime punishable by a fine of not more than $10,000 or imprisonment for not more than one year, or both.
- FEMA Administrator may determine additional materials to be subject to this allocation order.
- The rule is exempt from the Administrative Procedures Act and notice and comment are impracticable.
Administrator has determined that FEMA will not purchase covered materials from shipments made by or on behalf of 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, on a per item basis, was distributed in the United States in the preceding 12 months.

AAEI is setting up a survey for members to contribute questions pertaining to this FRN and rank them in importance so that we can submit your questions to CBP and FEMA for development of an FAQ document.

Please send us any issues of concern that you spot in the FRN.

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