



**U.S. Customs and
Border Protection**

April 9, 2020

MEMORANDUM FOR: Directors, Field Operations

FROM: Thomas Overacker
Executive Director
Cargo Conveyance & Security

A handwritten signature in black ink, appearing to read "Tom Overacker", written over the printed name and title.

SUBJECT: Updated Guidance for the Presidential Memorandum Regarding
Allocating Certain Scarce or Threatened Health and Medical
Resources to Domestic Use

This memorandum supersedes the guidance memorandum of April, 4, 2020.

The purpose of this memorandum is to provide updated guidance pertaining to the Friday, April 3, 2020, Presidential Memorandum (PM) regarding allocating certain scarce or threatened health and medical resources to domestic use. It also provides guidance for the Federal Emergency Management Agency (FEMA) Temporary Final Rule (TFR) that will be published on the Federal Register on April 10, 2020.

The intent of the PM and the TFR is to ensure that scarce or threatened personal protective equipment (PPE) materials remain in the United States for use in responding to the spread of COVID-19, and to prevent domestic brokers, distributors, and other intermediaries from diverting such material overseas.

Scarce or threatened PPE are defined as:

- (a) N-95 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;
- (b) 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;
- (c) Elastomeric, air-purifying respirators and appropriate particulate filters/cartridges;
- (d) PPE surgical masks, including masks that cover the user's nose and mouth and provide a physical barrier to fluids and particulate materials; and

(e) 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.

FEMA has conveyed to CBP that the focus of this effort is on commercial quantities. Commercial quantities are currently defined as shipments valued or \$2,500 and containing more than 10,000 units of gloves, masks, or other commodities referenced above.

The following circumstances are also excluded:

- Exports to Canada or Mexico;
- Exports to U.S. Government entities such as U.S. military bases overseas;
- Exports by U.S. Government agencies;
- Exports by U.S. charities;
- Exports by critical infrastructure industries for the protection of their workers;
- Exports by the 3M Company;
- Express or Mail Parcels that do not meet the commercial quantity definition above;
- In-transit shipments.

Ports are expected to continue to assess risk on shipments filed in AES and target shipments for commercial quantities of the PPE commodities that do not meet the exclusions.

The National Targeting Center (NTC) has refined the national user-defined rules (UDRs) in Export Cargo (AES), and will assist the field in creating or updating local UDRs as necessary.

For export shipments that do not meet the exclusions, Ports should first perform document reviews and conduct physical examinations if required to determine if the commodity fits the definition of scarce or threatened as shown above. It is not necessary to consult with the COVID-19 Cargo Resolution Team (CCRT) for every suspect shipment, only when commodity expertise is required.

Shipments with commercial commodities should **only be detained** at this time under 19 USC 1595A(d) with an underlying citation of 50 USC 4511(a)¹ pending further instructions from FEMA, but only within the following parameters:

Examined shipments that are filed in AES will be reported in Exam Findings in the Automated Export System (AES), regardless of the disposition of the shipments.

Examined shipments that are not filed in AES are to be reported by adding a Non-AES filing and entering exam findings, regardless of the disposition of the shipments.

For Non-AES filings, it is mandatory that the exam officers enters the following fields: Party Type, Name, Address, City, State, Postal Code, Country, Mode of Transportation, Commodity Description, Value, Quantity, and Weight. The FIRMS code where the goods are being detained

¹ Use 50 USC 4511(a), this is a correction to the April 4, 2020 Memorandum

should be provided as well. Additionally, if available it is mission critical that the exam officer enters the contact phone number.

Record the examination findings with operation name (Vader) and NTC event number (33261277) as shown below for accurate reporting. If a discrepancy is discovered, the examining officer is to upload all pertinent documents discovered including receipts, cost verifications etc.

Special Ops Name/Number	● Vader
NTC Event Number	● 33261277

Questions regarding this memorandum may be directed to James Swanson, Director, Cargo Security & Control, Cargo & Conveyance Security via email or at (202) 325-1257; or Assistant Director National Targeting Center Christine Waugh via email or at (571) 468-1520; or Gagandeep Singh, Chief Watch Commander, Cargo Division via email or at (202) 279-1902.