

MEMORANDUM FOR: The Honorable Paul Ray
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

THROUGH: Elizabeth A. Cappello
Chief Information Officer
Department of Homeland Security

FROM: Tracey L. Showman
Chief Administrative Officer
Mission Support
DHS Federal Emergency Management Agency

SUBJECT: Emergency Approval Request of New Information Collection to the
Office of Management and Budget (OMB) Collection 1660-NW123
Letter of Attestation regarding Export of Certain Scarce or Threatened
Medical Resources

The Federal Emergency Management Agency (FEMA) seeks to utilize the emergency process for approval for a new information collection to the Office of Management and Budget (OMB) Collection 1660-NW123 Letter of Attestation regarding Export of Certain Scarce or Threatened Medical Resources in accordance with Title I of the Defense Production Act of 1950 (DPA), as amended (50 U.S.C. 4501, *et seq.*) and Executive Order 13603, 77 FR 16651 (Mar. 22, 2012) and Executive Order 13911, 85 FR 18403 (Apr. 1, 2020). It is vital that FEMA implement the information collection as soon as possible to support immediate needs in response to the COVID-19 pandemic. In accordance with the Paperwork Reduction Act (PRA) and the Office of Management and Budget's (OMB) implementing regulations at 5 C.F.R. § 1320.13: (1) this information is necessary to the mission of the agency, (2) this information is necessary prior to the expiration of time periods established under PRA, (3) public harm is reasonably likely to result if normal clearance procedures are followed, and (4) an unanticipated event has occurred.

1. Information is Essential to the Mission of the Agency

This information is necessary to support the Prioritization and Allocation of Certain Scarce or Threatened Health and Medical Resources for Domestic Use temporary final rule¹. On April 10, 2020, the FEMA Administrator (Administrator) issued a temporary final rule (the "rule") to allocate certain scarce or threatened materials for domestic use, so that these materials may not be exported from the United States without explicit approval by FEMA. The rule aids the response of the United States to the spread of COVID-19 by ensuring that certain scarce or threatened health and medical resources are appropriately allocated for domestic use.

The Administrator issued the rule under the authority of the Defense Production Act of 1950, as amended (DPA), and related executive orders and delegations. Most prominently, on April 3, 2020, the President

¹ 70 FR 20195, Apr. 10, 2020.

signed a Memorandum on Allocating Certain Scarce or Threatened Health and Medical Resources to Domestic Use (Memorandum). In the Memorandum, the President directed the Secretary of Homeland Security, through the Administrator, and in consultation with the Secretary of Health and Human Services (HHS), to use any and all authority available under section 101 of the DPA to allocate to domestic use, as appropriate, five types of personal protective equipment (PPE) materials (covered materials).

Consistent with the Memorandum, the rule provides that until August 10, 2020, and subject to certain exemptions, no shipments of covered materials may leave the United States without explicit approval by FEMA. The rule requires U.S. Customs and Border Protection (CBP), in coordination with such other officials as may be appropriate, to notify FEMA of an intended export of covered materials. CBP must temporarily detain any shipment of such covered materials pending the Administrator's determination whether to return for domestic use, issue a rated order for, or allow the export of part or all of the shipment. In making such determination, the Administrator may consult other agencies and will consider the totality of the circumstances, 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; and (6) international relations and diplomatic considerations.

FEMA would require a letter of attestation regarding the Export of Certain Scarce or Threatened Medical Resources be submitted to FEMA via CPB's document imaging system and placed on file with CBP, certifying to FEMA the purpose of the shipment of covered materials.

2. Public Harm is Reasonably Likely to Result if Normal Clearance Procedures are Followed

Public harm is reasonably likely to result if normal clearance procedures are followed because it may lead to delays in the flow of legitimate commerce to affected entities abroad which are not subject to the agency's export restrictions under the Defense Production Act of 1950. Such an outcome would have unnecessary negative effects on Americans and others abroad as well as on the commerce of the United States.

3. An Unanticipated Event has Occurred

4. In response to the COVID-19 public health emergency, FEMA has taken unprecedented action to ensure that the necessary PPE does not leave the United States during our time of need. The agency acknowledges, through its enforcement discretion actions, that there are legitimate exemptions to the export restrictions it has put in place, however, and is placing these exemptions in place as they are necessary for the national defense of the United States.
- Conclusion

Following the normal clearance procedures for approval, will delay FEMA's ability to collect this information in order to facilitate commerce by quickly approving the export of shipments otherwise subject to the agency's export restrictions under the DPA. Such export shipments are necessary for the national defense. As discussed, FEMA certifies that the requirements of 5 CFR 1320.13(a) are met and it is vital this new collection be implemented immediately, because: (1) this information is necessary to the mission of the agency, (2) this information is necessary prior to the expiration of time periods established under PRA, (3) public harm is reasonably likely to result if normal clearance procedures are followed, and (3) an unanticipated event has occurred.

Thank you for your consideration.