

APPENDIX AE
TEMPLATE FOR INDIVIDUAL OR CLASS DETERMINATION AND FINDINGS
(D&F) FOR DOMESTIC NONAVAILABILITY EXCEPTIONS TO THE KISSELL
AMENDMENT

INDIVIDUAL OR CLASS DETERMINATION FOR AN EXCEPTION TO THE
KISSELL AMENDMENT BASED UPON NONAVAILABILITY OF [INSERT ITEM]

- a. **Identification of Agency and Contracting Activity.** Identify the agency, contracting activity, and program office. (Example: The Department of Homeland Security (DHS), Office of Procurement Operations, Science and Technology Directorate is requesting approval for a nonavailability exception to the Kissell Amendment.
- b. **Nature and/or Description of Action being Approved.** Identify and describe the item being procured. This section shall include all the following information:

Description of item being acquired including –

- relevant salient characteristics and rationale for each, i.e., document the impact to mission should an item be acquired that does not meet each of the salient characteristics;
 - mission need the item(s) are intended to satisfy;
 - anticipated mission impact if there is no waiver;
 - country(ies) of origin of identified acceptable items; and
 - estimated value of procurement(s).
- **Note:** For determinations on a class basis, (i) identify the number of procurements or orders expected to be covered under the determination, (ii) identify the expected maximum duration of the proposed waiver and rationale behind the desired length of the waiver (e.g., 6 months, 1 year) including the impact to operations if the requested duration is not approved, and (iii) address why it is believed that market conditions are not likely to change during the anticipated duration of the waiver.

- c. **Citation of the appropriate Statute and/or Regulation upon which this D&F is based.**

The statute and regulation upon which this D&F is based is Section 604 of the American Recovery and Reinvestment Act of 2009 and Homeland Security Acquisition Regulation (HSAR) 3025.7002-2(c) as supplemented by Homeland Security Acquisition Manual (HSAM) 3025.7002-2(c)(70).

FINDINGS

- d. **Findings of Particular Circumstances, Facts or Reasoning that Support the**

Determination. This section should include all the following information:

- (1) **Market Research:** This section should include all the following information:
 - Description of the market research activities and methods (see FAR 10.002(b)(2)) used to identify domestically manufactured items capable of satisfying the requirement. This section shall also include a discussion on whether a Sources Sought or Request for Information (RFI) was issued, where the notice was posted, and the length of time the notice was posted (Note: If a Sources Sought or RFI was not issued, the discussion should indicate why not.); and
 - Timing of the market research and any conclusions reached regarding the marketplace for the item(s) as a result of the Government’s market research.
- (2) **Analysis of Alternatives:** Document the alternatives identified through market research and reason(s) why an item(s) was determined to be either nonviable or viable.

Domestic Alternative(s)

Item Description	Country of Origin	Cost	Justification

Trade Agreements Act Compliant Alternative(s) (if applicable)

Item Description	Country of Origin	Cost	Justification

Nondomestic Alternative(s)

Item Description	Country of Origin	Cost	Justification

- (3) **Conclusion:** Tie all the information together to demonstrate why it has been determined that an item grown, reprocessed, reused, or produced in the United States cannot be acquired.

DETERMINATION:**e. Determination, based on the Findings, that the Proposed Action is Justified under the Applicable Statute or Regulation.**

Based on the findings detailed above, [insert item] are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Therefore, it is hereby determined, consistent with [HSAR 3025.7002-2(c) as supplemented by HSAM 3025.7002-2(c)(70)], that these items are nonavailable.

EXPIRATION DATE (for class determinations only):

The expiration date of this D&F is [insert date or timeframe] from the date of approval by the DHS Chief Procurement Officer (CPO).

- **Note:** For class determinations exceeding one year, the following statement shall be included in this section.

“Approval of this class determination is subject to [insert contracting activity and program office] updating the market research, supporting the assertions contained herein, on an annual basis to confirm the continued nonavailability of the item(s) covered by this D&F. The [insert contracting activity] will immediately notify the Office of the Chief Procurement Officer of any changes to the marketplace as a result of annual market research activities and will subsequently submit a revised waiver or request to rescind this waiver as appropriate.”

SUBMITTED BY:

Signature: _____
Name
Requiring Office
DHS Component and Organization

Date: _____

REVIEWED BY:

Signature: _____
Name
Contracting Officer
DHS Component and Organization

Date: _____

CONCURRED BY:

Pursuant to the requirements of the Kissell Amendment, as implemented in HSAR Part 3025, an exception to this authority under HSAR 3025.7002-2(c) is justified by the above supporting information and accurately forms the basis for this exception. Pursuant to HSAM 3025.7002-2(c)(70), I concur with this determination.

Signature: _____
Name
Head of the Contracting Activity
DHS Component

Date: _____

APPROVED BY:

Pursuant to the requirements of the Kissell Amendment, as implemented in HSAR Part 3025, an exception to this authority under HSAR 3025.7002-2(c) is justified by the above supporting information and accurately forms the basis for this exception. Pursuant to HSAR 3025.7002-2(c)(1), I approve this determination.

Signature: _____
Paul Courtney
Chief Procurement Officer
Department of Homeland Security

Date: _____