

APPENDIX AG
TEMPLATE FOR INDIVIDUAL OR CLASS DETERMINATION AND FINDINGS
(D&F) FOR DOMESTIC NONAVAILABILITY EXCEPTIONS TO THE MAKE PPE IN
AMERICA ACT

INDIVIDUAL OR CLASS DETERMINATION FOR AN EXCEPTION TO THE
MAKE PPE IN AMERICA ACT BASED UPON NONAVAILABILITY OF [INSERT
ITEM(S)]

Upon the basis of the following determination and findings (D&F), the nonavailability of domestic sources for supplies is determined for the purposes of the Make PPE in America Act (Pub. L. 117-58).

- 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 Make PPE in America Act.
- 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;
 - needs of public health emergency the item(s) are intended to meet or prevent;
 - 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, and (ii) identify the duration of the proposed waiver (not to exceed 120 days) and the impact to operations if the requested duration is not approved.
- 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 the Make PPE in America Act (Pub. L. 117-58) dated November 15, 2021, as implemented by Homeland Security Acquisition Regulation (HSAR) Class Deviation 23-01 Implementation of the Make PPE in America Act, and supplemented by Homeland Security Acquisition Manual (HSAM) 3025.71.

FINDINGS

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

Determination. This section should include all the following information:

- (4) **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 domestic personal protective equipment 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.
- (5) **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 Personal Protective Equipment Item(s)

Item Description	Cost	Justification

Foreign-made Domestic Personal Protective Equipment Item(s)

Item Description	Cost	Justification

BAA Compliant Alternative(s) (if applicable)

Item Description	Cost	Justification

TAA Compliant Alternative(s) (if applicable)

Item Description	Country of Origin	Cost	Justification

Note: Follow the procedures FAR 25.103 and HSAM 3025.103 or FAR 25.4 and HSAM 3025.4 if neither a BAA nor TAA compliant item is available.

(6) **Conclusion:** Tie all the information together to demonstrate that a domestic personal protective equipment item(s) meeting the Government’s need is not grown, reprocessed, reused, or produced in the United States in a sufficient quantity and of a satisfactory quality.

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(s)] are not grown, reprocessed, reused, or produced in the United States in a sufficient quantity and of a satisfactory quality. Therefore, it is hereby determined, consistent with HSAR Class Deviation 23-01 Implementation of the Make PPE in America Act and HSAM 3025.7102-2(d)(1), 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 (not to exceed 120 days), the following statement shall be included in this section.

“Approval of this class determination is limited to 120 days. Should a waiver be needed beyond the 120-day limitation, the [insert contracting activity and program office] shall update the market research, supporting the assertions contained herein, to confirm the continued nonavailability of the item(s) covered by this D&F. The [insert contracting activity] shall then request approval by the Office of the Chief Procurement Officer for additional 120 days. This process shall continue in 120-day increments until a waiver is no longer required.”

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 Make PPE in America Act, as implemented in HSAR Class Deviation 23-01, an exception to this authority under [HSAR 3025.7102-2(a) or HSAR 3025.7102-2(b)] is justified by the above supporting information and accurately forms the basis for this exception. Accordingly, I concur with this determination.

Signature: _____
Name
Head of the Contracting Activity
DHS Component

Date: _____

APPROVED BY:

Pursuant to the requirements of the Make PPE in America Act, as implemented in HSAR Class Deviation 23-01, an exception to this authority under [HSAR 3025.7102-2(a) or HSAR 3025.7102-2(b)] is justified by the above supporting information and accurately forms the basis for this exception. Accordingly, I approve this determination

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

Date: _____