



Kissell Amendment Compliance and Domestic Sourcing

August 1, 2023

Fiscal Year 2023 Report to Congress



**Homeland
Security**

Under Secretary for Management

Message from the Office of the Under Secretary for Management

August 1, 2023

I am pleased to present the following report, “Kissell Amendment Compliance and Domestic Sourcing,” which was prepared by the Office of the Chief Procurement Officer (OCPO).

This report responds to direction in the Joint Explanatory Statement, which accompanies the Fiscal Year (FY) 2023 Department of Homeland Security (DHS) Appropriations Act (P.L. 117-328). DHS remains committed to maximizing the use of domestic sources and ensuring that DHS’s procurements comply with all Made in America laws, including the Kissell Amendment. DHS also is committed to ensuring that personal protective equipment (PPE), body armor, and environmental and flame-resistant clothing procured by DHS or its Components are manufactured domestically from domestic materials to the maximum extent possible.



Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable David Joyce
Chairman, House Appropriations Subcommittee on Homeland Security

The Honorable Henry Cuellar
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable Chris Murphy
Chair, Senate Appropriations Subcommittee on Homeland Security

The Honorable Katie Britt
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

Inquiries relating to this report may be directed to me at (202) 447-3400.

Sincerely,

**RANDOLPH
D ALLES** Digitally signed by
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R.D. Alles
Senior Official Performing the Duties of the Under
Secretary for Management

Executive Summary

DHS is committed to acquiring domestically manufactured items to the maximum extent possible. To this end, the DHS OCPO has been a key partner to the Made in America Office (MIAO) within the Office of Management and Budget to identify and establish U.S. Government-wide policies and procedures to maximize domestic content and ensure that exceptions to domestic content requirements are reviewed and approved at appropriate levels. DHS OCPO led the interagency implementation of the Make PPE in America Act, Subtitle C of the Infrastructure Investment and Jobs Act (P.L. 117-58), and has issued implementing regulations and policies.

Regarding Made in America laws and regulations, DHS adheres to Federal Acquisition Regulation (FAR) Part 25, *Foreign Acquisition*, which implements the Buy American Act (BAA), the World Trade Organization Government Procurement Agreement, approved by Congress, the various free trade agreements, and other related initiatives and agreements. The Homeland Security Acquisition Regulation (HSAR) implements statutes and other matters unique to DHS such as the Kissell Amendment, which addresses textiles. The Homeland Security Acquisition Manual (HSAM)—DHS’s internal acquisition policies and procedures—implements or supplements requirements of the FAR and the HSAR.

For the past several years, and as previously reported to Congress, DHS has had robust internal policies and procedures in place to ensure proper oversight of Made in America laws and to ensure exceptions to such laws are used only when necessary. Additional actions were taken in FY 2023 to implement the Make PPE in America Act, Subtitle C of title IX of Division G of the Infrastructure Investment and Jobs Act (P.L. 117-58). Specifically, DHS OCPO has taken the following actions:

- ^ Issued HSAR Class Deviation 23-01 *Implementation of the Make PPE in America Act* (dated October 17, 2022) to implement the requirements of the Act;
- ^ Promulgated updates to HSAM Chapter 3025 *Foreign Acquisition*, to provide internal policies and procedures to ensure effective implementation of the Act. This update includes two new appendices to ensure any exceptions to the Act have proper internal oversight and are coordinated with the MIAO. The updates were published in the January HSAM Notice with an effective date of January 31, 2023; and
- ^ Provided Department-wide training titled “Made in America Laws and Other Domestic Content Restrictions” to the DHS acquisition workforce on April 5, 2023. In addition to providing a preview of the Homeland Procurement Reform Act requirement, the webinar provided participants with all of the information needed to:
 - o Determine which Made in America Law (i.e., the Buy American statute, Trade Agreements Act, Kissell Amendment, and Make PPE in America Act) is applicable to a given procurement;
 - o Identify if an exception to a Made in America Law applies to a given procurement;

- Comply with documentation and review requirements for the various exceptions to Made in America Laws; and
- Ensure proper coding of procurements in the Federal Procurement Data System.

DHS is working to finalize implementing policies for the Homeland Procurement Reform Act, Section 7112 of Subtitle B of Title LXXI of Division G of the James M. Inhofe National Defense Authorization Act for FY 2023 (P.L. 117-328) dated December 23, 2022. The draft policies are in review and are expected to be issued in June.



Kissell Amendment Compliance and Domestic Sourcing

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I. Legislative Language

This report was prepared pursuant to direction in the Joint Explanatory Statement accompanying the Fiscal Year (FY) 2023 Department of Homeland Security (DHS) Appropriations Act (P.L. 117-328).

The Joint Explanatory Statement includes the following:

Domestic Supply Chain.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security shall provide a report to the Committees with recommendations on how the Department may procure additional items from domestic sources and bolster the domestic supply chain for items related to national security. The report shall include a status of the compliance of the Department with the requirements under section 604 of title VI of division A of the American Recovery and Reinvestment Act of 2009 (6 U.S.C. 453b). Additionally, the report shall include an assessment of the capacity of the Department to procure the following items from domestic sources: personal protective equipment and other items necessary to respond to a pandemic such as that caused by COVID–19; body armor components intended to provide ballistic protection for an individual; helmets that provide ballistic protection and other head protection and components; and rain gear, cold weather gear, and other environmental and flame resistant clothing.

II. Kissell Amendment Compliance

DHS procurements comply with section 604 of title VI of division A of the American Recovery and Reinvestment Act of 2009 (6 U.S.C. 453b), also known as the Kissell Amendment. In August 2009, DHS updated the Homeland Security Acquisition Regulation (HSAR) to incorporate the requirements of the Kissell Amendment. The HSAR details the restriction on procurements of foreign textiles, provides a list of the types of textile items included in the restriction (e.g., yarn, wool, and cotton), identifies the exceptions noted in the Kissell Amendment, and provides details on the specific application of trade agreements. Additionally, HSAR clause 3052.225-70, Requirement of Use of Certain Domestic Commodities, was added to require the use of domestic goods for any procurement of a Kissell-covered item. The clause must be included in solicitations, the exercise of an option, contract modifications that add new items (or that make a significant change), and contracts with a value exceeding the simplified acquisition threshold unless an exception applies.

In addition to updating the HSAR, DHS issued two HSAR Class Deviations on the applicability of the Kissell Amendment. HSAR Class Deviation, “Applicability of the ‘Kissell Amendment’ to Department of Homeland Security Acquisitions,” dated March 5, 2013, communicates that DHS interprets the Kissell Amendment to be permanent and not just applicable to American Recovery and Reinvestment Act awards. HSAR Class Deviation 13-01, Amendment 1 – HSAR 3052.225-70, Requirement for Use of Certain Domestic Commodities, dated March 14, 2013, provides additional clarifications on the implementation of the Kissell Amendment.

In FY 2017, the U.S. Government Accountability Office (GAO) assessed DHS’s implementation of the Kissell Amendment and its effectiveness. In its final report titled, “Government Procurement: Effect of Restriction on DHS’s Purchasing of Foreign Textiles Is Limited” (GAO-18-116, dated November 21, 2017), GAO found that DHS had updated its policies and procedures appropriately to incorporate the Kissell Amendment and that the Kissell Amendment restrictions were included in the contracts that it reviewed. Furthermore, compliance was reinforced through DHS’s acquisition review process; a requirement for all DHS Components to use Department-wide contracts; verification procedures; and training for contracting personnel. GAO did not make any recommendations to DHS as a result of these findings.

III. Personal Protective Equipment

Regarding personal protective equipment (PPE), DHS is subject to compliance with the Make PPE in America Act (Act), Subtitle C of title IX of Division G of the Infrastructure Investment and Jobs Act (P.L. 117-58), dated November 15, 2021. The Act requires DHS, the U.S. Department of Veterans Affairs, and the U.S. Department of Health and Human Services to ensure any contract for the procurement of PPE, defined as surgical masks; respirator masks and powered air purifying respirators and required filters; face shields and protective eyewear; gloves; disposable and reusable surgical and isolation gowns; head and foot coverings, and other gear or clothing used to protect an individual from the transmission of disease, to be:

- ^ Issued for a duration of at least 2 years, plus all option periods necessary, to incentivize investment in the production of PPE and the materials and components thereof in the United States; and
- ^ For PPE, including the materials and components thereof, that is grown, reprocessed, reused, or produced in the United States.

The DHS Office of the Chief Procurement Officer (OCPO) leads the interagency implementation of the Act, including being the first interagency to implement the Act. Specifically, OCPO:

- ^ Issued HSAR Class Deviation 23-01, Implementation of the Make PPE in America Act, on October 17, 2022, to implement in the HSAR the requirements of the Act; establish the DHS Chief Procurement Officer as the approving official for all determinations and certifications required under the Act; require procurement of Buy American Act (BAA) compliant or Trade Agreements Act compliant PPE when wholly domestically manufactured PPE is not available; and establish a new clause and provision for inclusion in solicitations and contracts for PPE;
- ^ Updated Chapter 3025 Foreign Acquisition of the Homeland Security Acquisition Manual (HSAM) to:
 - ^ require use of Department-wide vehicles to acquire PPE;
 - ^ provide contract type and period of performance requirements for Department-wide vehicles; and
 - ^ identify documentation requirements, including mandatory templates for the determinations required under the Act.

As previously reported to Congress, DHS continues to use the Department-wide PPE Safety Stock contract, awarded on March 28, 2022, to support the Department's operational and pandemic safety needs. The contract has been modified to comply with the Act.

IV. Helmets, Head Protection, and Components

Helmets that provide ballistic protection and other head protection and components are not available for purchase under DHS's strategically sourced body armor contracts. Such items are procured at the local level on an as-needed basis. Given the manner in which these items are purchased, DHS is unable to determine their country of origin to confirm or refute that they are domestically sourced.

V. Rain Gear, Cold Weather Gear, and Other Environmental and Flame-Resistant Clothing

DHS acquires rain gear, cold weather gear, and flame-resistant clothing from domestic sources. DHS issued a strategically sourced, single-award Indefinite-Delivery/Indefinite-Quantity contract for uniform items that includes rain gear, cold weather gear, and flame-resistant clothing. All of the items are manufactured in the United States. As such, currently 100 percent of the rain gear, cold weather gear, and flame-resistant uniform items that DHS procures through its strategically sourced contract is sourced domestically.

VI. Recommendations

As documented in the preceding report sections and prior reports to Congress, DHS procurements utilize domestic sources to the maximum extent possible consistent with governmentwide and Department-specific requirements. These requirements include the FAR that implements the BAA and Trade Agreements Act, HSAR that implements the Kissell Amendment, and DHS's internal acquisition policies and procedures in the HSAM. These authorities have enabled DHS to maximize the use of domestic sources. As such, DHS does not have recommendations at this time for procuring additional items from domestic sources.

Appendix: Abbreviations

Abbreviation	Definition
BAA	Buy American Act
DHS	Department of Homeland Security
FAR	Federal Acquisition Regulation
FY	Fiscal Year
GAO	U.S. Government Accountability Office
HSAM	Homeland Security Acquisition Manual
HSAR	Homeland Security Acquisition Regulation
MIAO	Made in America Office
OCPO	Office of the Chief Procurement Officer
PPE	Personal Protective Equipment