DEPARTMENT OF HOMELAND SECURITY

48 CFR Parts 3025 and 3052

[Docket No. DHS-2024-0020]

RIN 1601-AB15

Homeland Security Acquisition Regulation, Make Personal Protective Equipment in America Act Restrictions on Foreign Acquisition (HSAR Case 2024-003)

AGENCY: Office of the Chief Procurement Officer (OCPO), Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: DHS is issuing a final rule to amend the Homeland Security Acquisition Regulation (HSAR) codifying how DHS complies with the requirements of the Make Personal Protective Equipment (PPE) in America Act. These changes are intended to ensure the sustainment and expansion of domestic manufacturing for certain types of PPE critical to the United States' national response to a public health crisis.

DATES: The final rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Shaundra Ford, Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation, at (202) 282-8000 or email at *HSAR@hq.dhs.gov*. Include HSAR Case 2024-003 in the subject line.

SUPPLEMENTARY INFORMATION:

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I. Background

In a Notice of Proposed Rulemaking (NPRM), published in the *Federal Register* on October 1, 2024, the Department of Homeland Security (DHS) proposed to amend the Homeland Security Acquisition Regulation (HSAR) to codify how DHS complies with the requirements of the Make Personal Protective Equipment (PPE) in America Act.[1]

As explained in the NPRM, the Infrastructure Investment and Jobs Act was signed into law on November 15, 2021.[2] Subtitle C of title IX of Division G of the Infrastructure Investment and Jobs Act is the Make PPE in America Act ("MPAA" or "the Act").[3] The Act requires the DHS, Department of Veterans Affairs (VA), and the U.S. Department of Health and Human Services (HHS) to take certain actions to ensure the sustainment and expansion of domestic manufacturing for certain types of PPE critical to the United States' national response to a public health crisis.[4]

The Act defines PPE 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.[5] The Act requires that any contracts for the procurement of PPE entered into by DHS, HHS, or VA be for PPE, including the materials and components thereof, that is domestically grown,

[1] *See* 89 FR 79851, Homeland Security Acquisition Regulation, Make Personal Protective Equipment in America Act Restrictions on Foreign Acquisition (HSAR Case 2024-003) (Oct. 1, 2024)
[2] Infrastructure Investment and Jobs Act, Pub. L. 117–58, 135 Stat. 429 (2021).
[3] Make PPE in America Act, Pub. L. 117–58, div. G, title IX, subtitle C, sections 70951-70953, 135 Stat. 1312-1316. The Make PPE in America Act is codified in 41 U.S.C. 8301 note.
[4] Pub. L. 117-58, 135 Stat. 1312.
[5] Pub. L. 117-58., 135 Stat. 1313.

reprocessed, reused, or produced.[6] The Act also requires that these contracts with DHS, HHS, or VA for PPE last at least two years in duration plus all option periods necessary, to incentivize investment in the domestic production of PPE and the materials and components thereof.[7] The Act allows for alternatives to domestic production under certain conditions (i.e., where PPE assembled outside of the United States (U.S.) contains only materials and components grown, reprocessed, reused or produced in the U.S.).[8] When using alternatives to domestic production, DHS, HHS, or VA, as applicable, must certify every 120 days that alternatives to domestic production are necessary to procure PPE due to the immediate needs of a public health emergency.[9] The Act further recognizes certain exceptions to the domestic production of PPE, such as due to nonavailability, or where the PPE cannot be procured at U.S. market prices.[10] Where DHS, HHS, or VA respectively grants an exception, that Secretary would also need to certify that implementing these exceptions are necessary to meet the immediate needs of a public health emergency.[11]

As discussed in the NPRM, the DHS Chief Procurement Officer can issue HSAR deviations when necessary to allow Components to deviate from the HSAR.[12] On October 17, 2022, DHS issued a deviation regarding how DHS would comply with the Make PPE in America Act requirements (Deviation 23-01).[13]

II. Discussion of Public Comments

Interested parties were given until December 2, 2024, to comment on the NPRM. DHS reviewed the public comments in the development of the final rule. DHS received

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[6] Pub. L. 117-58, 135 Stat. 1313-14.
[7] Pub. L. 117-58, 135 Stat. 1314.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *See* HSAR Deviations, available at: https://www.dhs.gov/publication/current-hsar-deviations.
[13] See HSAR 3001.4 and HSAR Class Deviation 23-01 *Implementation of the Make PPE in America Act* at https://www.dhs.gov/sites/default/files/2022-10/HSAR Class Deviation 23-01 Implementation of Make PPE in America Act - 508 Final.pdf.

23 public comments. A certain number of the comments received were outside the scope of the rule. A discussion of the comments within the scope of the rule is provided, as follows:

1. Definitions

Comment: Several commenters asked DHS to modify its definition of "component," "domestic personal protective equipment," "foreign-assembled domestic personal protective equipment," and "foreign personal protective equipment." Commenters suggested including the availability exception in the Act for nonavailable articles listed in FAR 25.104(a) to these definitions and, for the "foreign-assembled domestic personal protective equipment," and "foreign personal protective equipment" definitions, limiting the applicability of FAR 25.104(a) to components used in American manufacturing facilities.

Commenters noted the MPAA includes a nonavailability exception that permits agencies to acquire covered PPE from foreign sources when compliant domestic products are not available in sufficient quantity or quality to meet agency requirements or are included in the nonavailable articles listing in FAR 25.104(a). The commenters further stated that nitrile butadiene rubber (NBR), a key raw material used to manufacture nitrile gloves, is a synthetic latex rubber and therefore falls within definition of "rubber, crude, and latex" which is currently identified as nonavailable in the listing. The commenters assert that inclusion of an express reference to FAR 25.104(a) in the "component" definition will limit waivers from the Act's requirements that allow DHS to acquire foreign-sourced nitrile gloves.

Additionally, the commenters stated that the existing definitions of "foreign-assembled domestic personal protective equipment," and "foreign personal protective equipment" circumvent the intent of the Act, allowing for the offshore of manufactured

items to be identified as domestic and providing foreign manufacturers an advantage over American manufacturers.

Response: DHS declines to adopt the commenters' suggestions to revise the definitions to incorporate FAR 25.104(a); to otherwise address the domestic nonavailability status of NBR; and to include language limiting the applicability of FAR 25.104(a) to components used in American manufacturing facilities.

First, the nonavailable articles list at FAR 25.104(a) is subject to periodic review and amendment. Incorporating specific references to articles identified as nonavailable under FAR 25.104(a) into the HSAR could create inconsistencies if future revisions are made to the FAR. DHS therefore believes it is more appropriate to rely on the existing statutory and regulatory framework rather than codify specific nonavailability determinations in the HSAR.

Second, DHS disagrees with the commenters' assertion that the nonavailability exception in section 70953(d) of the MPAA applies only to domestic manufacturing facilities. Section 70953(d)(1) expressly provides that the requirements of sections (b) and (c) do not apply to an item of personal protective equipment, or component or material thereof, that is, or that includes, a material listed in FAR 25.104. Accordingly, the statute expressly contemplates application of the nonavailability exception to covered PPE, components, and materials, including those acquired under the alternative domestic production authority. Limiting the exception as suggested would be inconsistent with the plain language of the Act.

Third, DHS does not believe that revisions to the definitions are necessary to address NBR nonavailability under the Act. Since implementing the MPAA in October 2022, DHS has relied on nonavailability waivers to acquire nitrile gloves for a variety of reasons, including limited domestic manufacturing capacity to meet DHS specifications and quantity requirements; limited availability of domestic nitrile gloves capable of

successfully passing Transportation Security Administration (TSA) testing requirements; and the lack of domestic production of NBR. Prior to January 2026, DHS sourced nitrile gloves from both domestic and foreign manufacturers. However, as domestic manufacturing capacity expanded, DHS transitioned to sourcing all nitrile glove requirements from domestic manufacturers.[14] Although domestic manufacturers continue to rely on foreign-sourced NBR due to the current absence of domestic NBR production, DHS has demonstrated that it can achieve its domestic sourcing objectives without modifying the definitions as suggested.

Moreover, whether NBR may be categorized as "rubber, crude, and latex" under FAR 25.104(a) is not dispositive for the purposes of this rule. Because NBR is not currently produced domestically, agencies acquiring covered PPE that contains NBR have historically relied on the MPAA's nonavailability exception and associated waiver processes to support the domestic nonavailability status of NBR. DHS therefore does not believe revising the definitions is necessary to address the domestic nonavailability of NBR. Accordingly, DHS declines to incorporate specific references to FAR 25.104(a) or NBR in the regulatory definition of "component."

2. Expand "Restrictions" section to include additional language

Comment: Multiple commenters requested that DHS revise HSAR 3025.7102-1, Restrictions, to emphasize that the MPAA prioritizes PPE manufactured in the U.S. by American workers. These commenters also recommended narrowing the application of waivers and exceptions to ensure DHS gives preference to wholly domestic PPE supply chains and manufacturing facilities. The commenters assert that DHS's proposed implementation of the MPAA relies too heavily on broad waivers and exceptions, which could undermine the Act's purpose of strengthening domestic PPE manufacturing.

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[14] *See, e.g.,* DHS waiver for nitrile butadiene rubber available at https://www.madeinamerica.gov/waivers/nonavailability/6994cfdf16e70851109b4247 (last visited Sep. 8, 2026).

The commenters argued that continued reliance on foreign-manufactured gloves and reseller-based supply chains discourages private investment in U.S. manufacturing capacity, weakens domestic supply chain resilience, and places American jobs at a competitive disadvantage. The commenters requested that DHS include new paragraphs (c) and (d) to the restrictions listed in 3025.7102-1 as follows: "(c) The intent of the law and priority is given to American Manufacturers of domestic personal protective equipment to include narrow waivers focused on United States based manufacturing facilities and exceptions identified herein to promote national security, support American manufacturing facilities in the United States, and American workers in an effort to reshore and sustain critical American manufacturing capability in the United States. (d) All contract for personal protective equipment, per the purpose of the, as identified in Section 70951 of the Make PPE in America Act which purpose is for the United States to ensure a robust, secure, and wholly domestic PPE supply chain to safeguard public health and national security; to further this effort it provides DHS with flexibility on procurement sources as it does not incorporate any requirement to use a quasi-government mandatory source and thus DHS will use Small Business Sources and encourage our contracting officer to actively seek out and consider small businesses for contracts and American based manufacturing facilities that can manufacture in the United States as priority options."

Finally, some commenters contended that the Act's requirements should apply to "quasi-governmental" procurement programs and recommended DHS exhaust domestic manufacturing sources before relying on resellers or nonmanufacturer arrangements.

Response: DHS declines to add the suggested language to the regulatory text in section 3025.7102-1. It is unnecessary to include the purpose and intent of the statute and intent of the law in the regulatory text as the regulations do not change this. Such

language may also cause confusion as similar language is not typically included in acquisition regulations.

DHS also disagrees with the commenters' characterization of DHS's use of waivers and exceptions under the MPAA. The Act expressly contemplates the use of exceptions and waivers in specified circumstances, including when compliant domestic products, components, or materials are unavailable. Accordingly, DHS's use of waivers is consistent with the MPAA which provides for exceptions where domestic industrial capacity is not sufficient to meet agency requirements.

DHS further notes that the MPAA establishes domestic sourcing requirements for covered PPE but does not create separate procurement preferences based on workforce composition, ownership structure, or the nationality of a manufacturer's employees. Therefore, DHS declines to adopt the commenters' proposed references to "American workers" and "American manufacturers" in the regulatory text.

Finally, DHS declines to adopt the commenters' recommendation that contracting officers be required to exhaust domestic manufacturers before considering authorized distributors, resellers, or other permissible acquisition channels. The MPAA establishes sourcing requirements for covered PPE but does not prescribe particular distribution channels or acquisition methodologies. Accordingly, DHS does not believe such a requirement would be appropriate for inclusion in the HSAR. Such inclusion could inadvertently result in noncompliance with statutes governing competition in contracts which do not allow blanket preference of manufacturers over distributors and resellers.

To the extent the commenters' references to "quasi-government" agency program contracts are directed at the AbilityOne Program and Procurement List requirements applicable to nitrile gloves, DHS notes that the AbilityOne Program operates pursuant to the Javits-Wagner-O'Day (JWOD) Act, codified at 41 U.S.C. chapter 85, which establishes a mandatory source program for certain products and services furnished by

qualified nonprofit agencies employing people who are blind or have significant disabilities. The Committee for Purchase From People Who Are Blind or Severely Disabled (operating as the AbilityOne Commission) administers the program and maintains the Procurement List, accessible at www.abilityone.gov, identifying mandatory source products and services. Federal agencies are generally required to procure listed items through the designated AbilityOne nonprofit agency (NPA) or its authorized distribution channels in accordance with FAR subpart 8.7 Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled of the Federal Acquisition Regulation. Accordingly, DHS is required to buy Procurement List[15] products or services from the organization designated on the Procurement List or from an authorized AbilityOne distributor until: (1) the government no longer has requirements for that item, or (2) an NPA employing people who are blind or have significant disabilities can no longer furnish that item. This requirement remains unchanged by the MPAA.

It appears some commenters incorrectly believe DHS is using the fact that nitrile gloves are a Procurement List item to circumvent the requirements of the MPAA. Upon implementation of the Act, DHS immediately extended the requirements of the MPAA to nitrile glove purchases from AbilityOne. DHS's reliance on waivers to acquire nitrile gloves had nothing to do with the fact that these items are sourced through AbilityOne. DHS used waivers to acquire nitrile gloves for a variety of reasons, including limited domestic manufacturing capacity to meet DHS specifications and quantity requirements, limited availability of domestic nitrile gloves capable of successfully passing TSA testing requirements, and the lack of domestic production of NBR. Prior to January 2026, DHS sourced nitrile gloves from both domestic and foreign manufacturers. However, as

[15] *See* 41 U.S.C. chapter 85, FAR subpart 8.7, and the Procurement List at https://www.abilityone.gov/procurement_list/index.html.

domestic manufacturing capacity expanded, DHS transitioned to sourcing all nitrile glove requirements from domestic manufacturers. The transition to sourcing 100 percent of DHS's nitrile gloves to domestic manufacturers is largely attributable to the partnership between DHS and our AbilityOne NPA. Accordingly, DHS declines to adopt the suggestion as it is not needed to achieve its domestic sourcing objectives.

3. Exceptions language

Comment: Several commenters asserted that section 70953(d)(1)(A) of the MPAA expressly incorporates the nonavailability determinations contained in FAR 25.104(a) and therefore excludes covered PPE component and materials identified on that list from the Act's domestic sourcing requirements. The commenters argued that DHS should revise HSAR 3025.7102-2 to clarify that materials such as NBR are automatically exempt from the Act when used in PPE manufactured in the United States and that no additional nonavailability determination or waiver should be required.

Response: DHS declines the commenters' request to modify section 3025.7102-2 to include reference to FAR 25.104 or otherwise address the domestic nonavailability status of NBR. The nonavailable articles list at FAR 25.104 is subject to periodic review and amendment. Incorporating specific references to articles identified as nonavailable under FAR 25.104 into the HSAR could create inconsistencies if future revisions are made to the FAR. DHS therefore believes it is more appropriate to rely on the existing statutory and regulatory framework rather than codify specific nonavailability determinations in the HSAR. DHS also disagrees with the commenters' assertion that the inclusion of a material, component, or supply on the FAR 25.104 nonavailability list automatically eliminates the need for agencies to comply with the Act's exception procedures. While section 70953(d)(1)(A) references articles, materials, and supplies identified in FAR 25.104, DHS does not believe it is necessary or appropriate to incorporate those determinations directly into HSAR. The existing statutory and regulatory framework

provides sufficient flexibility to address nonavailable materials and components without creating separate regulatory provisions for specific items in FAR 25.104. Additionally, because NBR is not currently produced domestically, agencies acquiring covered PPE that contains NBR have historically relied on the MPAA's nonavailability exception and associated waiver processes to address the lack of a domestic source. DHS therefore does not believe inclusion of the requested language is necessary to address the current domestic nonavailability of NBR.

4. HSAR 3052.225-7X Make PPE in America

Comment: Multiple commenters requested DHS revise 3025.7102-2(b) to clarify treatment of components and materials identified as nonavailable under FAR 25.104. The commenters' asserted that PPE manufactured in the United Sates should remain compliant with the MPAA when it contains components or materials listed in FAR 25.104, including NBR. The commenters also proposed revising the paragraph to expressly recognize component-specific waivers and nonavailability determinations when evaluating compliance with the Act's domestic sourcing requirements as follows: "(b) The Contractor shall deliver only domestic personal protective equipment except the domestic manufactured products include component items except under the FAR 25.104 or the agency provides a specific component waiver for domestic manufactured personal protective equipment or to the extent that it specified delivery of foreign-assembled domestic personal protective equipment in the provision of the solicitation entitled "Make PPE in America Certificate."

Response: Although the commenter cited HSAR 3025.7102-2(b), DHS understands the comment as requesting revisions to the clause at HSAR 3052.225-7X based on the proposed clause language provided. Notwithstanding this, DHS declines to make this change to the clause. The regulatory text at 3025.7102-2 makes clear the applicability of

the exception at FAR 25.104. Therefore, including a reference to the nonavailable articles listing in FAR 25.104 in the clause text is unnecessary and redundant.

DHS also declines to incorporate references to specific nonavailable materials, component-specific waivers, or component-level nonavailability determinations into the clause. The purpose of the clause is to implement the contractor's obligation to provide covered PPE that complies with statutory and regulatory requirements applicable to the acquisition. The clause is not intended to restate all exceptions, waiver authorities, and nonavailability determination that may apply under the Act or related regulations. Those matters are addressed elsewhere in the statutory and regulatory framework, including HSAR 3025.7102-2. Accordingly, DHS believes the existing clause adequately implements the Act without the proposed revisions.

5. AbilityOne and Similar Network Providers

Comment: One commenter requested creation of a specific category to clarify the status of PPE repackaging operations under programs like AbilityOne, ensuring transparency and alignment with domestic manufacturing priorities. The commenter asserts this refinement would ensure alignment with industry practices and the intent of the Act.

The commenter also recommended DHS explicitly address AbilityOne exceptions within the order of precedence framework, stating that the Department's current model allows for foreign-produced PPE to receive preference through AbilityOne repackaging operations, undermining the intent of the MPAA. The commenter further stated this is particularly relevant for nitrile gloves, where certain providers import bulk products from Malaysia for domestic repackaging. To prevent this from happening, the commenter stated waiver usage should be narrowly tailored to support U.S. manufacturers utilizing TAA-compliant components rather than allowing broad allowances that benefit foreign producers.

Response: DHS declines the commenter's recommendation to create a specific category for repackaging operations under programs like AbilityOne. DHS also declines to explicitly identify AbilityOne in the order of preference framework and disagrees that the current model allows for foreign-produced PPE to receive preference through AbilityOne repackaging operations.

The AbilityOne Program operates pursuant to the JWOD Act, codified at 41 U.S.C. chapter 85, which establishes a mandatory source program for certain products and services furnished by qualified nonprofit agencies employing people who are blind or have significant disabilities. The Committee for Purchase From People Who Are Blind or Severely Disabled (operating as the AbilityOne Commission) administers the program and maintains the Procurement List, accessible at www.abilityone.gov, identifying mandatory source products and services. Federal agencies are generally required to procure listed items through the designated AbilityOne NPA or its authorized distribution channels in accordance with FAR subpart 8.7 Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled of the Federal Acquisition Regulation.

Nitrile gloves are a Procurement List item for the Department. DHS is required to buy Procurement List products or services from the organization designated on the Procurement List or from an authorized AbilityOne distributor until: (1) the government no longer has requirements for that item, or (2) an NPA employing people who are blind or have significant disabilities can no longer furnish that item. This requirement remains unchanged by the MPAA.

As previously stated, it appears some commenters incorrectly believe DHS is using the fact that nitrile gloves are a Procurement List item to circumvent the requirements of the MPAA. Upon implementation of the Act, DHS immediately extended the requirements of the MPAA to nitrile glove purchases from AbilityOne. DHS's reliance

on waivers to acquire nitrile gloves was unrelated to the items being sourced through AbilityOne. DHS used waivers to acquire nitrile gloves for a variety of reasons, including limited domestic manufacturing capacity to meet DHS specifications and quantity requirements, limited availability of domestic nitrile gloves capable of successfully passing TSA testing requirements, and the lack of domestic production of NBR. Prior to January 2026, DHS sourced nitrile gloves from both domestic and foreign manufacturers. However, as domestic manufacturing capacity expanded, DHS transitioned to sourcing all nitrile glove requirements from domestic manufacturers. The transition to sourcing 100 percent of DHS's nitrile gloves to domestic manufacturers is largely attributable to the partnership between DHS and our AbilityOne NPA. Accordingly, DHS declines to adopt the suggestions as they are not needed to achieve its domestic sourcing objectives.

6. Domestic PPE Categories

Comment: One commenter asked DHS to split "domestic personal protective equipment" into two distinct categories, i.e., "wholly domestic PPE" for items manufactured entirely in the United States and "domestically manufactured PPE" for items like nitrile gloves that currently require some imported raw materials. The commenter requested that the "domestically manufactured PPE" category explicitly recognize FAR 25.104(a) exceptions for materials like NBR, allowing sourcing from Trade Agreements Act (TAA)-compliant countries without penalty while maintaining domestic manufacturing status.

Response: DHS declines to create sub-categories for domestic personal protective equipment. For the purposes of the MPAA, PPE is either domestic, foreign-assembled domestic, or foreign. These definitions were established for consistency with the MPAA which requires purchase of domestic PPE and use of alternative domestic sources when domestic PPE is not available. An additional defined category of PPE is not necessary to

implement the availability exception regarding FAR 25.104. Notwithstanding this, the nonavailable articles list at FAR 25.104 is subject to periodic review and amendment.

Incorporating specific references to articles identified as nonavailable under FAR 25.104 into the HSAR could create inconsistencies if future revisions are made to the FAR. DHS therefore believes it is more appropriate to rely on the existing statutory and regulatory framework rather than codify specific nonavailability determinations in the HSAR.

7. Exception Criteria for Nonavailability and Unreasonable Cost

Comment: One commenter requested DHS provide additional guidance regarding the applicability of the nonavailability and unreasonable cost exceptions. Specifically, the commenter recommended: (1) establishing objective quality standards and qualification benchmarks for evaluating nonavailability determinations; (2) adopting defined methodologies and thresholds for determining when costs are unreasonable, including consideration of total cost of ownership and reliability factors; and (3) clarifying materials and components identified as nonavailable under FAR 25.104, including NBR, are exempt from the Act's domestic sourcing requirements when incorporated into PPE manufactured in the United States.

Response: DHS declines the commenter's recommendation to identify specific quality standards under the exception criteria for nonavailability and unreasonable cost. First, the MPAA provides explicit instruction on the use of the nonavailability exception. Second, DHS does not perform subjective quality assessments and instead relies on established PPE specifications. DHS PPE specifications are based on standards promulgated by either the American National Standards Institute (ANSI), American Society for Testing and Materials (ASTM), or National Institute for Occupational Safety and Health (NIOSH), and regarding nitrile gloves, TSA-specific testing for interference with explosives detection equipment/machines before use. DHS specifications for PPE

have been shared with industry multiple times via industry meetings and postings to SAM.gov. As such, it is clear DHS does not rely on subjective quality standards.

Regarding identification of a specific methodology for determining whether an item is being provided at an unreasonable cost, DHS declines the commenter's recommendation. DHS intentionally refrained from identifying a specific calculation methodology to allow more flexibility for DHS and to minimize unfavorable impacts to industry. This flexibility is needed due to fluctuating market conditions that could result in the use of unreasonable cost determinations too frequently. Additionally, given DHS acquires these items on a firm fixed price basis, we would not review the individual cost elements associated with the final price of the item. Notwithstanding this, to date DHS has not used the unreasonable cost exception to acquire personal protective equipment covered under this rulemaking.

DHS declines to further identify that the requirements of the MPAA do not apply to PPE, or a component or material thereof, that is or includes a material on the nonavailable articles listing in FAR 25.104(a) or limit the applicability of the exception to U.S.-based manufacturing facilities. The nonavailability exception is already addressed in the regulatory text. Specifically, section 3025.7102–2(b)(1) states that the purchase restrictions of the MPAA do not apply to PPE, or component thereof, "that is, or that includes, a material listed in FAR 25.104 as one for which a nonavailability determination has been made." Accordingly, DHS concludes the proposed revisions are unnecessary because the existing regulatory text already implements the statutory nonavailability exception and appropriately addresses materials identified in FAR 25.104.

8. Implementation Timeline

Comment: One commenter stated that the proposed implementation timeline appears workable provided DHS maintains clear communication with industry and allows reasonable adjustment periods for manufacturers to scale production. The commenter

recommended: (1) a phased approach to domestic content requirements, particularly for items requiring development of domestic raw material sources; (2) ongoing engagement with manufacturers to address implementation challenges and refine guidance as needed; and (3) clear instructions regarding certification and compliance documentation to minimize administrative burdens.

Response: DHS appreciates the commenter's support for the proposed implementation timeline and agrees that continued communication with industry and clear compliance guidance are important to successful implementation of the Act. The MPAA directs agencies to implement the contract requirements beginning 90 days after the enactment of the Act. Accordingly, DHS lacks authority to phase in domestic sourcing requirements beyond the implementation framework established by Congress. As such, a phased approach to domestic content requirements is not possible. However, the Act authorizes the use of exceptions and waivers when covered PPE is unavailable from domestic sources or available only at an unreasonable cost, providing flexibility where domestic industrial capacity cannot meet requirements.

DHS has established forums for ongoing engagement with industry on a variety of procurement topics, including the MPAA. Additionally, DHS waivers under the MPAA are publicly posted at MadeinAmerica.gov. DHS intends to continue engaging with industry and other stakeholders regarding implementation of the Act and related acquisition requirements.

The provision at 3052.225-7Y Make PPE in America Certificate clearly articulates how contractors must certify compliance with MPAA requirements, including requesting identification of the line item for the covered PPE item(s) identifies and the country of assembly. DHS believes the existing certification provision, together with publicly available solicitation and contract documentation, provides sufficient guidance regarding compliance with the Act and does not require further revision as part of this rulemaking.

9. Tiered Sourcing Hierarchy

Comment: One commenter urged DHS to adopt a tiered sourcing hierarchy that prioritizes domestic PPE manufacturing to the greatest extent possible before allowing waivers under the MPAA. Specifically the commenter recommends DHS: (1) give first priority to PPE manufactured in the United States using domestically sourced components; (2) allow U.S.-manufactured PPE using TAA-country components when required components are not available domestically, without requiring a waiver; (3) allow U.S.-manufactured PPE using non-TAA foreign components when domestic or TAA-sourced components are unavailable, without requiring a waiver; (4) permit waivers for foreign-manufactured PPE from TAA countries only after domestic manufacturing options have been exhausted; and (5) permit waivers for non-TAA foreign-manufactured PPE only as a last resort when no domestic or TAA-country sources are available. The commenter argues this approach would better advance the MPAA's objective of strengthening domestic PPE manufacturing by prioritizing U.S.-based production and employment while recognizing the practical reality that certain components, such as NBR, may not be available from domestic sources.

Response: DHS declines to adopt the commenter's proposed restrictions on when a waiver may be used or establish the proposed sourcing hierarchy. The circumstances under which an exception may be used are defined in the MPAA. The Act requires agencies to prioritize the acquisition of covered PPE manufactured in the United States and authorizes the use of exceptions when covered PPE is unavailable or available only at an unreasonable cost. Nothing in the Act directs agencies to create additional tiers of preference among otherwise permissible sources or exhaust particular categories of suppliers before relying on a statutory exception.

DHS has nevertheless taken an additional step beyond the requirements of the MPAA by requiring procurement of either Buy American statute compliant or TAA-compliant

PPE, depending on the dollar value of the procurement, when MPAA compliant PPE is not available. This approach ensures domestically manufactured PPE receives first consideration and that Buy American statute compliant or TAA-compliant PPE is acquired when MPAA compliant PPE cannot be obtained due to nonavailability or unreasonable cost.

DHS also declines to adopt the proposed hierarchy because it does not account for all circumstances in which the Act authorizes use of an exception, including situations involving either nonavailability or unreasonable cost. Further, the proposed hierarchy does not account for agency-specific performance requirements that may affect the availability of compliant PPE, such as the TSA testing requirements applicable to nitrile gloves.

Notwithstanding this, DHS has only used the nonavailability exception when sourcing nitrile gloves and only when necessary to meet mission requirements. To date, DHS has relied on the nonavailability exception to cover a portion of DHS's nitrile glove demand. Prior to January 2026, DHS sourced nitrile gloves from both domestic and foreign manufacturers. However, as domestic manufacturing capacity expanded, DHS transitioned to sourcing all nitrile glove requirements from domestic manufacturers.

Accordingly, DHS declines to adopt the proposed sourcing hierarchy and believes the final rule appropriately implements the statutory framework established by Congress while preserving the flexibility necessary to address nonavailability, unreasonable cost, agency mission requirements, and changing market conditions.

10. Prioritization

Comment: One commenter asked DHS to prioritize American-made products in government procurement decisions and carefully consider prioritizing products fully manufactured in the United States, but that might use certain raw materials unavailable domestically, from Trade Act compliant nations.

Response: DHS already prioritizes wholly domestically manufactured PPE. When these items are not available, either due to nonavailability or unreasonable cost, DHS seeks to acquire either a Buy American statute compliant or TAA-compliant item.

11. Out of Scope

Comment: Some commenters requested that DHS revise the regulatory text to encourage contracting officers to seek out domestic manufacturers, including small businesses, when acquiring covered PPE.

Response: These suggestions are beyond the scope of this rule. This rule is about implementing the MPAA. The MPAA does not include provisions regarding small business participation and the NPRM did not propose requirements involving small business participation.

III. Final Rule

This final rule amends the HSAR at 48 CFR part 3025, Foreign Acquisition, and at 48 CFR part 3052, Solicitation Provisions and Contract Clauses. The rule adds a new HSAR subpart, an HSAR clause, and an HSAR provision which codifies how DHS complies with the Act. These changes also codify the requirements from Deviation 23-01. Each of these amendments are described in detail in the following paragraphs.

This final rule adds new subpart 3025.71, Make PPE in America Act Restrictions on Foreign Acquisition, to the HSAR, codifying the restrictions in Deviation 23-01 applicable to the acquisition of certain PPE consistent with the Act. These restrictions include minimum time periods for contract duration, content requirements for certain PPE, alternatives to domestic production when conforming PPE is not available, and exceptions when conforming PPE is either nonavailable or cannot be procured at U.S. market prices (or in other words, only available at an unreasonable cost).

This rule also codifies the definitions of terms used in Deviation 23-01.[16] These terms are "component," "domestic personal protective equipment," "foreign-assembled domestic personal protective equipment," "foreign personal protective equipment," "personal protective equipment," and "United States."

Additionally, this rule applies to all types of actions, orders, option exercises, and contracts awarded and administered by DHS. It requires contracting officers to purchase domestic PPE except for when certain exceptions, specified in HSAR 3025.7102-2, apply and also requires that any contract for PPE has a base period of performance of at least two years, plus option periods.

HSAR 3025.7102-2 codifies the conditions under which acquisitions of PPE, or component thereof, are excepted from the requirements of HSAR 3025.7102-1 (i.e., alternatives to domestic production, nonavailability, and unreasonable cost) consistent with Deviation 23-01.

This final rule further codifies the clauses and provisions that apply when an exception due to nonavailability or unreasonable cost is used, as listed in Deviation 23-01.[17] Additionally, this final rule codifies HSAR 3025.7103, HSAR clause 3052.225-7X, Make PPE in America, and HSAR provision HSAR 3052.225-7Y, Make PPE in America Certificate. The final rule makes a technical edit to consistently use the term "DHS Chief Procurement Officer' where applicable. Otherwise, DHS adopts the NPRM as final, amending 48 CFR part 3025, Foreign Acquisitions, and 48 CFR part 3052, Solicitation Provisions and Contract Clauses.

IV. Regulatory Analyses

A. Executive Orders 12866, 13563, and 14192

Executive Orders 12866 (Regulatory Planning and Review) and 13563

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[16] *See* 48 CFR 3025.7101.
[17] *See* 48 CFR 3025.7102-3.

(Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 14192 (Unleashing Prosperity Through Deregulation) directs agencies to significantly reduce the private expenditures required to comply with Federal regulations and provides that "any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations."

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulatory action. This rule is not an Executive Order 14192 regulatory action because this rule is not significant under Executive Order 12866. *See* OMB Memorandum M-25-20, "Guidance Implementing Section 3 of Executive Order 14192, titled 'Unleashing Prosperity Through Deregulation'" (Mar. 26, 2025).

Need for the Rule

This final rule codifies the requirements as set forth in the Act and Deviation 23-01. DHS is updating the Homeland Security Acquisition Regulation (HSAR) to align with current DHS practice in Deviation 23-01. This rule provides for consistency between the Act and the HSAR.

Benefits and Costs of the Final Rule

The benefits and costs of a regulation are generally measured against a no-action baseline, which is a reasonable forecast of the way the world would look absent the regulatory action being assessed.[18] As the final rule aligns the regulations with DHS

[18] *See* OMB Circular A-4, p, 15 (September 17, 2003) (accessible at accessible at https://www.whitehouse.gov/wp-content/uploads/2025/08/CircularA-4.pdf/).

current practice, it does not result in additional costs for the Federal Government. The rule codifies the requirement for contactors to submit a Make PPE in America Certificate, only in the situation when the contractor is proposing foreign-assembled domestic PPE. DHS already included this contractor requirement to certify compliance in Deviation 23-01. Because DHS contractors already comply with Deviation 23-01, they would not incur new costs due to this rule.

However, Deviation 23-01, which is how DHS complies with the requirements of the Act, may cause DHS to incur additional costs in the form of higher prices for domestically produced PPE compared to foreign-produced PPE. Future DHS procurement price differences between domestic and foreign-sourced PPE are difficult to accurately estimate. External factors (outside of the Act's requirement) may influence prices. For example, U.S. Government investments in domestic PPE production could factor into domestic production costs and prices. There is uncertainty on foreign governments investment in foreign PPE production which would impact foreign prices. An analysis of PPE would have to be conducted by type of PPE, such as the domestic and foreign prices of masks, protective eyewear, or gloves. Further, DHS has specific requirements in certain procurements such as gloves (i.e., testing for interference with explosive equipment and protection against Fentanyl exposure) that would need to be considered in any price comparisons.[19] Another factor that would be difficult to address in direct price comparisons is product differences. There are no internationally agreed upon guidelines or standards of what specific products make up PPE categories, complicating product comparisons.[20]

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[19] DHS, *White Paper: Current State of Personal Protective Equipment Procurement by Make PPE in America Act Covered Agencies.* 3-4 (March 13, 2024)

[20] "For example, KN95 respirator masks- China made analogues to domestically regulated N-95 respirators- are generally not authorized as medical PPE in the United States. KN95 are authorized in many countries abroad and received temporary (and limited) Emergency Use Authorization from the [U.S. Food and Drug Administration] FDA." FDA, Certain Filtering Facepiece Respirators from China May Not Provide Adequate Respiratory Protection—Letter to Health Care Providers, October 15, 2020, at

Consequently, due to the lack of specific data, complexity of various factors, and uncertainty of external price influences, DHS is not able to estimate the long-run additional DHS cost of an increased shift to domestic PPE procurements due to the requirements of the Act. Importantly, DHS has already complied with the requirements of the Act through Deviation 23-01 and subsequent contract changes.

Congress recognized the need for the United States to have a robust, secure, and wholly domestic PPE supply chain to safeguard public health and national security.[21] This final rule codifies the statutory requirements that support the sustainment of the U.S. PPE supply chain. This final rule would provide the clarification benefit of consistency and transparency for contractors and DHS contracting officers.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121 (Mar. 29, 1996), requires Federal agencies engaged in rulemaking to consider the economic impacts of their rules on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people). This final rule will provide clarity and consistency between the HSAR and existing DHS practice as set forth in Deviation 23-01. Contractors currently provide the Make PPE in America Certificate in compliance with Deviation 23-01. The Make PPE in America Certificate is required only if the offeror is proposing foreign-assembled domestic PPE. DHS estimates the contractor burden based on experience from subject matter experts familiar with

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https://www.fda.gov/medical-devices/letters-health-care-providers/certain-filtering-facepiece-respirators-china-may-not-provide-adequate-respiratory-protection-letter.

[21] Pub. L. 117-58, 135 Stat. 1313.

Deviation 23-01. DHS estimates it will take a contractor 15 minutes to identify any foreign-assembled domestic PPE items it is offering and complete the Make PPE in America Certificate. DHS assumes an estimated hourly compensation rate of $57.95 for the time burden.[22] The time burden cost per certificate would be $14.49 (15 minutes × $57.95).

Based on the estimated cost of $14.49 per certificate, DHS assumes this cost would not be a significant economic impact on a small entity affected by the final rule. DHS also believes that contractors generally pass along the cost of complying with DHS contracting requirements to DHS. Therefore, DHS certifies under 5 U.S.C. 605(b) that this final rule would not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of 44 U.S.C. 3507(d), obtain approval from the OMB for each collection of information it conducts, sponsors, or requires through regulations. This final rule contains information collection requirements. Accordingly, DHS is updating OMB No. 1600-0005, Solicitation of Proposal Information for Award of Public Contracts.

The collection requirements for this final rule are nominal and based on the new provision, 3052.225-7Y, Make PPE in America Certificate.

Overview of Information Collection:

(1) *Type of Information Collection:* Modification to Existing Collection.

[22] The average hourly earnings are based upon the U.S. Department of Labor, Bureau of Labor Statistics' website (www.bls.gov). The wage rate category selected is for Business and Financial Operations Occupations (13-0000), May 2022. The rate is estimated to be $57.95 ($41.39 x 1.4), which includes the wage rate multiplier.

(2) *Title of the Form/Collection:* Solicitation of Proposal Information for Award of Public Contracts.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* No form; OCPO.

(4) *Affected public who will be asked or required to respond; as well as a brief abstract*: The affected public is business or other for-profit institutions. DHS needs the information required by provision 3052.225-72 to assess contractor compliance with the Make PPE in America Act. Responses are required for respondents to obtain or retain benefits.

(5) *An estimate of the total number of respondents* a*nd the amount of time estimated for an average respondent to respond*: The estimated number of respondents for reporting is 0.08. This number is nominal because a response to this provision is required only if the offeror is proposing foreign-assembled domestic PPE. Such response should be rare, because the offeror of such products is unlikely to receive an award, unless no offers for domestic PPE are received. In Fiscal Year (FY) 2022, DHS awarded 8 contracts for domestic PPE. DHS estimates it will receive ten offers per solicitation. Using the number of contracts awarded in FY 2022, DHS estimates it received 80 offers. DHS estimates 0.2 percent of offers, or 0.16 responses, will include foreign-assembled domestic protective equipment. The average number of responses per respondent is two or 0.08 respondents. DHS estimates it will take each respondent 15 minutes to complete the certificate. These numbers are not unusual given that DHS awarded a mandatory for use, Departmentwide contract for domestic PPE in March of 2022 and the requirements of provision 3052.225-72 Make PPE in America Certificate were satisfied at the contract level. Standalone contracts are awarded only when the domestic PPE needed is not available under the Departmentwide contract.

(6) *An estimate of the total public burden (in hours) associated with the information collection:* The total estimated annual hour burden associated with this collection is 0.033 hours or 2 minutes.

(7) *An estimate of the total public burden (in cost) associated with the information collection:* The estimated total annual cost burden associated with this collection of information is $2.32.

D. National Environmental Policy Act

DHS and its components analyze regulatory actions to determine whether the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* applies to them and, if so, what degree of analysis is required. DHS Directive 023-01 Rev. 01 "Implementing the National Environmental Policy Act" (Dir. 023-01 Rev. 01) and Instruction Manual 023-01-001-01 Rev. 01 (Instruction Manual)[23] establish the policies and procedures that DHS and its components use to comply with NEPA.

NEPA allows Federal agencies to establish, in their NEPA implementing procedures, categories of actions ("categorical exclusions") that experience has shown do not, individually or cumulatively, have a significant effect on the human environment and, therefore, do not require an environmental assessment or environmental impact statement. *See* 42 U.S.C. 4336(a)(2), 4336e(1). The Instruction Manual, Appendix A lists the DHS Categorical Exclusions.[24]

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece

[23] The Instruction Manual, which contains DHS's procedures for implementing NEPA, was issued on November 6, 2014, and is available at https://www.dhs.gov/ocrso/eed/epb/nepa (last modified July 29, 2025).

[24] *See* Appendix A, Table 1.

of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.[25]

The final rule amends the HSAR to better clarify how DHS complies with the Make PPE in America Act, and codifies Deviation 23-01 that is currently in effect. DHS is not aware of any significant impact on the environment, or any change in environmental effect that will result from this final rule.

DHS has reviewed this final rule and finds that no significant impact on the environment, or any change in environmental effect will result from the amendments being promulgated in this final rule. Accordingly, DHS finds that the promulgation of this final rule clearly fits within categorical exclusion A3, established in the DHS's NEPA implementing procedures as an administrative change with no change in environmental effect, is not part of a larger Federal action, and does not present extraordinary circumstances that create the potential for a significant environmental effect. Therefore, this final rule is categorically excluded from further NEPA review.

List of Subjects in 48 CFR Parts 3025 and 3052

Government procurement.

Accordingly, for the reasons set forth in the preamble, DHS amends 48 CFR parts 3025 and 3052 as follows:

PART 3025 — FOREIGN ACQUISITION

1. The authority citation for part 3025 is revised to read as follows:

Authority: 5 U.S.C. 301-302, 41 U.S.C. 1303, 41 U.S.C. 1707, 41 U.S.C. 1702, 41 U.S.C. 8301 note, 48 CFR part 1, subpart 1.3, DHS Delegation No. 00701, Revision No. 03.2, paragraphs (III)(H), and DHS Delegation No. 00702, Revision No. 01.2, paragraphs (III)(M).

2. Add subpart 3025.71 to read as follows:

Subpart 3025.71 – Make PPE in America Act Restrictions on Foreign Acquisition

Sec.

3025.7100 Scope of subpart.

[25] Instruction Manual 023-01 at V.B(2)(a)-(c).

3025.7100 Scope of subpart.

This subpart contains restrictions on the acquisition of certain personal protective equipment (PPE) imposed by the Make PPE in America Act (Pub. L. 117-58), and they apply to all types of actions, orders, option exercises, and contracts entered into on or after February 14, 2022.

3025.7101 Definitions.

As used in this subpart –

(a) *Component*, as applied to an item described in 3025.7102-1, means an article, material, or supply incorporated directly into an item of personal protective equipment.

(b) *Domestic personal protective equipment*, as applied to an item described in 3025.7102-1, means personal protective equipment, including the materials and components thereof, that is grown, reprocessed, reused, or produced in the United States.

(c) *Foreign-assembled domestic personal protective equipment*, as applied to an item described in 3025.7102-2, means personal protective equipment that is assembled outside the United States containing only materials and components that are grown, reprocessed, reused, or produced in the United States.

(d) *Foreign personal protective equipment* means personal protective equipment other than domestic personal protective equipment or foreign-assembled domestic personal protective equipment.

(e) *Personal protective equipment*, as applied to an item described in 3025.7102-1, means 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.

(f) *United States*, as applied to an item described in 3025.7102-1, means the 50 States, the District of Columbia, and the possessions of the United States.

3025.7102 Restrictions on certain personal protective equipment.

3025.7102-1 Restrictions.

The following restrictions implement section 70953 of the Make PPE in America Act, and they apply to all types of actions, orders, option exercises, and contracts.

(a) Except as provided in 3025.7102-2, contracting officers shall purchase domestic personal protective equipment.

(b) Any contract for personal protective equipment shall have a base period of performance of at least 2 years, plus all option periods.

3025.7102-2 Exceptions.

Acquisitions in the following categories are not subject to the restrictions in 3025.7102-1:

(a) Acquisitions of an item of personal protective equipment, or component thereof, otherwise covered by 3025.7102-1 when the DHS Chief Procurement Officer:

(1) Maximizes sources for foreign-assembled domestic personal protective equipment; and

(2) Certifies every 120 days that it is necessary to procure personal protective equipment under alternative procedures to respond to the immediate needs of a public health emergency.

(b) Acquisitions of an item of personal protective equipment, or component thereof, including those described in paragraph (a) of this section—

(1) That is, or that includes, a material listed in FAR 25.104 as one for which a nonavailability determination has been made; or

(2) As to which the DHS Chief Procurement Officer determines that a sufficient quantity of a satisfactory quality that is grown, reprocessed, reused, or produced in the United States cannot be procured as, and when, needed at United States market prices; and

(3) The DHS Chief Procurement Officer certifies every 120 days that it is necessary to procure personal protective equipment to respond to the immediate needs of a public health emergency.

(c) When either of the exceptions in paragraph (a) or (b) of this section are used:

(1) Only the DHS Chief Procurement Officer is authorized to make the certification in paragraphs (a)(2) and (b)(3) of this section or the nonavailability or unreasonable cost determination in paragraph (b) of this section.

(2) The supporting documentation for the DHS Chief Procurement Officer shall be prepared by the DHS Component(s) and:

(i) For the certification in paragraphs (a)(2) and (b)(3) of this section:

(A) Include a written justification documenting the immediate public health emergency requiring use of alternative procedures; and

(B) Be concurred on by the Head of the Contracting Activity before submission to the DHS Chief Procurement Officer.

(ii) For the nonavailability or unreasonable cost determination in paragraph (b) of this section:

(A) Include a written justification documenting why a nonavailability or unreasonable cost exception is required; and

(B) Be concurred on by the Head of the Contracting Activity before submission to the DHS Chief Procurement Officer.

3025.7102-3 Specific application of the Buy American statute and Trade Agreements Act.

In the event the DHS Chief Procurement Officer determines neither domestic personal protective equipment nor foreign-assembled domestic personal protective equipment is available due to nonavailability or unreasonable cost, contracting officers shall apply one of the following:

(a) The clause at FAR 52.225-1, Buy American – Supplies, and the provision at FAR 52.225-2, Buy American Certificate;

(b) The clause at FAR 52.225-3, Buy American – Free Trade Agreements – Israeli Trade Act, and the provision at FAR 52.225-4, Buy American – Free Trade Agreements – Israeli Trade Act Certificate; or

(c) The clause at FAR 52.225-5, Trade Agreements, and the provision at FAR 52.225-6, Trade Agreements Certificate, as applicable.

3025.7103 Solicitation provisions and contract clauses.

(a) Insert the clause at 3052.225-71, Make PPE in America, in solicitations and contracts, regardless of dollar value, when procuring any item covered under 3025.7102-1(a).

(b) Insert the provision at 3052.225-72, Make PPE in America Certificate, in solicitations containing the clause at 3052.225-71.

PART 3052 — SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for part 3052 is revised to read as follows:

Authority: 5 U.S.C. 301-302, 41 U.S.C. 1303, 41 U.S.C. 1707, 41 U.S.C. 1702, 41 U.S.C. 8301 note, 48 CFR part 1, subpart 1.3, DHS Delegation No. 00701, Revision No. 03.2, paragraphs (III)(H), and DHS Delegation No. 00702, Revision No. 01.2, paragraphs (III)(M).

4. Add section 3052.225-71 to read as follows:

3052.225-71 Make PPE in America.

As prescribed in 3025.7103(a), insert the following clause:

MAKE PPE IN AMERICA ([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER])

(a) *Definitions.* As used in this clause—

Component, as applied to an item described in paragraph (b) of this clause, means an article, material, or supply incorporated directly into personal protective equipment.

Domestic personal protective equipment, as applied to an item described in paragraph (b) of this clause, means personal protective equipment, including the materials and components thereof, that is grown, reprocessed, reused, or produced in the United States.

Foreign-assembled domestic personal protective equipment, as applied to an item described in paragraph (b) of this clause, means personal protective equipment that is assembled outside the United States containing only materials and components that are grown, reprocessed, reused, or produced in the United States.

Foreign personal protective equipment means personal protective equipment other than domestic personal protective equipment or foreign-assembled domestic personal protective equipment.

Personal protective equipment, as applied to an item described in paragraph (b) of this clause, means 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.

United States, as applied to an item described in paragraph (b) of this clause, means the 50 States, the District of Columbia, and the possessions of the United States.

(b) The Contractor shall deliver only domestic personal protective equipment except to the extent that it specified delivery of foreign-assembled domestic personal

protective equipment in the provision of the solicitation entitled "Make PPE in America Certificate."

(c) *Order of Precedence.* In the event the Department of Homeland Security determines neither domestic personal protective equipment nor foreign-assembled domestic personal protective equipment are available due to nonavailability or unreasonable cost, the Contractor shall comply with the clauses at Federal Acquisition Regulation (FAR) 52.225-1 Buy American – Supplies or 52.225-3 Buy American – Free Trade Agreements – Israeli Trade Act and the provisions at FAR 52.225-2 Buy American Certificate or 52.225-4 Buy American – Free Trade Agreements – Israeli Trade Act Certificate or the clause at FAR 52.225-5 Trade Agreements and the provision at FAR 52.225-6 Trade Agreements Certificate, as applicable.

(End of clause)

5. Add section 3052.225-72 to read as follows:

3052.225-72 Make PPE in America Certificate.

As prescribed in 3025.7103(b), insert the following provision:

MAKE PPE IN AMERICA CERTIFICATE ([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER])

(a)(1) The Offeror certifies that each item of personal protective equipment, except those listed in paragraph (b) of this provision, is domestic personal protective equipment.

(2) The Offeror shall list foreign-assembled domestic personal protective equipment items.

(3) The terms "domestic personal protective equipment," "foreign-assembled domestic personal protective equipment," "foreign personal protective equipment," and

"personal protective equipment," are defined in the clause of this solicitation entitled "Make PPE in America."

(b) Foreign-assembled Domestic Personal Protective Equipment:

Line Item No.	Country of Assembly
_____	_____
_____	_____
_____	_____

[*List as necessary*]

(c) In the event the Department of Homeland Security determines both domestic personal protective equipment and foreign-assembled domestic personal protective equipment are not available due to nonavailability or unreasonable cost, the Contractor shall comply with the clauses at Federal Acquisition Regulation (FAR) 52.225-1 Buy American – Supplies or 52.225-3 Buy American – Free Trade Agreements – Israeli Trade Act and the provisions at FAR 52.225-2 Buy American Certificate or 52.225-4 Buy American – Free Trade Agreements – Israeli Trade Act Certificate or the clause at FAR 52.225-5 Trade Agreements and the provision at FAR 52.225-6 Trade Agreements Certificate, as applicable. The contracting officer will notify offerors if a nonavailability or unreasonable cost determination is made.

(End of provision)

Paul Courtney,

Chief Procurement Officer,

U.S. Department of Homeland Security.

[FR Doc. 2026-19207 Filed: 9/17/2026 8:45 am; Publication Date: 9/18/2026]