



Alabama State Department of Education

Child Nutrition School Meals Program

Buy American Compliance

EVALUATING MANUFACTURERS STATEMENTS FOR BUY AMERICAN COMPLIANCE

To be considered domestic under the Buy American provisions, the product must be:

1. **An agricultural commodity that is produced in the United States; and**
2. **A food product that is processed in the United States substantially using over 51 % of agricultural commodities that are grown domestically.**

Often, the country of origin for items (produce, as an example) is listed directly on the invoice or packaging when purchased. However, this does not fulfill the full requirement to determine if a product meets the Buy American definition.

The School Food Authority (SFA) can require manufacturers selling goods to serve a federally funded program to provide documentation to the buyer, which discloses the domestic content of their products as it relates to the Buy American provision. It is incumbent of the manufacturer to truthfully declare their products as compliant.

Explanation of different types of manufacturer statements, and how they apply to the School Nutrition Programs Buy American provisions, are detailed below. If the SFA does not require the manufacturer to provide this documentation, the SFA is still required to ensure compliance with all contractual requirements including the Buy American provision.

Examples of Statements Demonstrating Compliance with Buy American Requirement:

Manufacturers will reference the Buy American Provision in their statement of compliance and may or may not include the applicable citations.

Example A: To assist school food authorities in complying with the Buy American provision, we certify that all our juice beverages and frozen juice novelties are sourced from and processed in the US.

Why is this acceptable? The statement indicates “all” the products are both sourced from and processed domestically. Therefore, the “all” would imply 100% of the product is domestic.

Some manufacturers may put out a statement that includes a listing of products that meet the Buy American requirements, which will also confirm the percentage of final processed product that consists of agricultural commodities grown domestically. Two examples are below:

Example B: Thank you for your interest in using our products as part of your School Breakfast Program and National School Lunch Program. The attached table outlines our most popular school products that comply with the Buy American Provision, Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336), Section 12(n) of the National School Lunch Act {42 USC 1760(n)}.

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Item Number	Item Description	US Product
111111	Example: Oat Cereal, Whole Grain	60%

Why is this acceptable? The statement indicates compliance with applicable Buy American regulatory references. Additionally, the chart of items shows the percentage of the product that is considered domestic. In the example above, the product meets the criteria of containing over 51% agricultural commodities that were grown domestically.

Example C: The products listed below meet the provision set forth in the Buy American Act (7 CFR Part 210.21(d)) in that they were manufactured in the United States using substantial agricultural commodities that are produced in the United States. “Substantial” means that over 51 percent of the final processed product (by weight or volume) consists of agricultural commodities that are grown domestically.

Item Number	Item Description	US Product
22222	Example: Fruit Cocktail, in 100% Apple Juice	52%
333333	Example: Peaches, Sliced and Canned in Light Syrup	81%

Why is this acceptable? The statement indicates that items in the chart meet the definition of domestic under the Buy American provisions, while the chart indicates the percentage in each product, exhibiting that each is composed of over 51% domestically grown agricultural commodities.

Examples of Statements of food products that would not meet the Buy American requirement and would fall into the limited exceptions category (and therefore count toward the threshold):

Below is an example of a product that is domestically produced but does not contain over 51% of domestically grown agricultural commodities in the final processed product.

Example A: Buy American Certification – Our 100% Juice is produced in our facilities located in the USA and may contain domestic and/or imported juice concentrates, as a portion of the ingredients, based on availability and cost. None of our 100% juice products are imported and produced outside of the USA. Our juice meets the “Limited Exceptions” clause as identified in USDA Memos SP14-2012, SP 24-2016, and SP 38- 2017.

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Why is this not acceptable: There are instances where manufacturers' statements may look as if they show compliance, but do not reference the correct regulations. An example of one of those statements is below.

Example B: The products listed below meet the provision set forth in the Buy American Act of 1933 (41 U.S.C. § § 8301-8305). These products are exempt from the cost of component calculation because they were manufactured in the United States and are commercially available off-the-shelf items (COTS).

Why is this not acceptable: There is no indication that the product contains over 51% of domestically grown agricultural commodities in final processed product and wrong federal citation.

Example C: This item is a product of the Philippines.

Why is this not acceptable: This product is considered non-domestic because it was not produced or processed in the USA.

Example D: Country of origin – Mexico

Why is this not acceptable: This product will need to be considered non-domestic because it was not produced or processed in the USA.

Example E: This item is a product of Thailand and was processed in the USA.

Why is this not acceptable: This product is considered to be non-domestic because it was not produced in the USA.

The Alabama State Department of Education recognizes that these statements may be unclear, and that questions may arise regarding whether certain products meet the requirements of the Buy American provision or qualify for an exception. For clarification or further guidance, please contact us at cnpnslp@alsde.edu.