

Comment 1

Fw: Comments

Thomas J Smith (CENSUS/EMD FED)

Fri 9/18/2015 10:30 AM

To: Kiesha Downs (CENSUS/ITMD FED) <kiesha.downs@census.gov>;

Cc: Charles W Gamble III (CENSUS/ITMD FED) <charles.w.gamble.iii@census.gov>; Daniel J Cariello (CENSUS/ITMD FED) <Daniel.J.Cariello@census.gov>;

1 attachment (84 KB)

[Untitled].pdf;

Here is a comment received in response to the August 20 presubmission notice for the AES. Please provide a summary of the comments and a response to the comments in your answer to Question 8 of the Supporting Statement. No direct response to the sender is required.

Tom Smith
PRA Liaison for the ECON Area
Economic Management Division
8K028C
(301)763-1181

From: Danielle A Norman (CENSUS/PCO FED)
Sent: Friday, September 18, 2015 7:49 AM
To: Thomas J Smith (CENSUS/EMD FED)
Subject: Fw: Comments

The attached comment came from DOC/OCIO. It looks like an AES comment? If I have sent this in error, please let me know.

Danielle

From: Dumas, Sheleen <sdumas@doc.gov>
Sent: Thursday, September 17, 2015 2:38 PM
To: Danielle A Norman (CENSUS/PCO FED)

Cc: Jeannette D Greene-Bess (CENSUS/PCO FED); Byron Crenshaw (CENSUS/PCO FED); Jessup, Jennifer
Subject: Comments

We received the following comments in the mail today

Let me know if you have any questions.

Thanks,

Sheleen Dumas

Office of IT Policy and Planning (OITPP)

Office of the Chief Information Officer

Office of the Secretary

U.S. Department of Commerce

Office: 202-482-3306

SDumas@doc.gov

I am writing to make two points regarding the August 20th notice in the Federal Register.

First, why have you not identified the HTS/Sched B's affected by the new/used electronics proposal? This is kinda important.

Second, I take exception to the comment that "While the Census Bureau is proposing to add two additional data elements, the overall time per response is expected to remain at three minutes per AES filing." This cavalier and, frankly, ignorant comment reveals that our bureaucrats at Census have no idea how businesses operate. Data elements are not captured out of thin air. It typically takes a lot of time, money and IT effort to accommodate requests like this, especially in a global company with many sites and systems. But even if we're talking only about the process of AES filing, three minutes times 100 daily shipments adds up over the course of 260 working days to 1,300 hours annually. You act as if this is inconsequential to businesses. Please get your heads out of the sand.

Comment 2



U.S. Department of Commerce
Economics and Statistics Administration

September 28, 2015

Jennifer Jessup
Departmental Paperwork Clearance Officer
U.S. Department of Commerce, Room 6616
14th and Constitution Avenue, NW
Washington, DC 20230

Re: *Federal Register* notice of August 20, 2015, for the U.S. Census Bureau's Automated Export System (AES) (OMB Number: 0607-0152)

Dear Ms. Jessup:

The Bureau of Economic Analysis (BEA) strongly supports the continued collection of data by the Census Bureau's Automated Export System (AES) or through *AESDirect*, as well as through the post-departure filing program. The data collected are crucial to key components of BEA's economic statistics.

BEA uses the export data to prepare U.S. merchandise trade statistics and U.S. trade in services statistics covering transportation services. These statistics are components of the U.S. international transactions accounts (ITAs). Data from the ITAs are used for measuring U.S. gross domestic product and for preparing the input-output accounts of the United States.

BEA also supports the additional data elements to reflect new export reporting requirements. More complete and timely export data, which would be achieved through these regulatory changes, would help improve the accuracy of the U.S. international and national accounts statistics.

Please keep BEA informed about any modifications to the AES. We are particularly interested in any modifications proposed during the approval process that would substantially affect our use of these data. For additional information, please contact Tiffany Burrell, Source Data Coordinator, on 202-606-9618 or by e-mail at Tiffany.Burrell@bea.gov. Should you need assistance in justifying this program to the Office of Management and Budget, please do not hesitate to contact BEA.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis Fixler", is written over a horizontal line.

Dennis Fixler
Chief Statistician

Comment 3

Question Federal Register Notice - Proposed Information Collection; Comment Request; Automated Export System (AES) Program

Matthew.Staker@ricoh-usa.com

Fri 10/2/2015 2:11 PM

To: Kiesha Downs (CENSUS/ITMD FED) <kiesha.downs@census.gov>;

Hi Kiesha,

In regards to the Federal Register Notice titled, "Proposed Information Collection; Comment Request; Automated Export System (AES) Program" that was published on August, 20, 2015.

I have a question I am hoping you can help answer. In the Section 1 Abstract beginning with paragraph four, there is reference to the a proposed "New or Used Electronics indicator field".

From a AES Filing perspective, which Schedule B and HTS codes qualify as "Electronics" when potentially using this proposed new indicator?

If there is any resource you could direct me to, it would be very much appreciated.

Thank You,

Matthew Staker
Export Compliance Specialist

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Comment 4

TUTTLE LAW
Customs and International Trade Law

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October 7, 2015

FILE REFERENCE NO. 0011

Via e-mail: jjessup@doc.gov

Jennifer Jessup
Departmental Paperwork Clearance Officer
Department of Commerce
14th and Constitution Avenue NW, Room 6616
Washington, DC 20230

Re: **August 20, 2015 Notice of Proposed Rulemaking (NPR) (80 Fed. Reg. 50597) to Amend the FTR with New Export Reporting Requirements.**

Dear Ms. Jessup:

We are submitting these comments in response to the August 20, 2015 Federal Register Notice (80 Fed. Reg. 50597) of proposed rulemaking to amend the Foreign Trade Regulations with new export reporting requirements. The NPR provides for the addition of two new data elements in the AES, and certain clarifications to existing reporting requirements. The proposed data elements include an Original Internal Transaction Number (ITN) field and a "New or Used Electronics" indicator field.

I. The Proposal to Include an Original Internal Transaction Number (ITN) Field for the AES Record.

The August 20, 2015 notice provides that the Original ITN field will be an optional field that may be utilized if the filer needs to create an additional AES record for a shipment that was previously filed. The notice explains that adding the Original ITN field will assist the export trade community and enforcement agencies in identifying whether a filer completed the mandatory filing requirements for the original shipment. The notice provides that the inclusion of this information may decrease the issuance of unnecessary penalties for these types of shipments.

Comments to August 20, 2015 Notice of Proposed Rulemaking to Amend
the FTR with New Export Reporting Requirements
October 7, 2015
Page 2

We agree with the proposal to include the **Original ITN field** as an optional data element in the AES. There are times when the filer is required to file new Electronic Export Information (EEI) in the AES to modify or replace an existing EEI for goods that have already been exported. This can occur, for example, when a single shipment is split while the commodities are en-route and there is a new consignee with a new address for part of the shipment. In such a situation, Census has advised that:

During the export process, business transactions occasionally occur after the goods are exported but before they reach their reported destination. Based on the Foreign Trade Regulations, Section 30.9(a), corrections to Electronic Export Information (EEI) must be made in the Automated Export System (AES) once they become known and as soon as possible. This article specifically addresses correcting the EEI for a shipment that was exported and, while the cargo was in transit to its original destination, a portion was sold to another consignee in a different location.

Because of this division in the shipment, AES requires separate reporting of two shipments.

The first shipment must be corrected using the original Internal Transaction Number (ITN) and a new record must be created to obtain a second ITN.

Transmit the original EEI as a REPLACE or CHANGE, and then submit the new EEI (with a different Shipment Reference Number) as an ADD. [Emphasis added.]

The new EEI will trigger a compliance alert, however, because the AES database does not allow the filer to use the original EEI into two or more transactions. And, because the new transaction will be reported in the AES post export, it will generate a compliance alert to Customs and Border Protection that a late filed EEI was made, potentially resulting in the issuance of a notice of penalty.¹ Because of this, the filer must currently contact the CBP Outbound Enforcement Team responsible for the export clearance process at the port of

¹ Under the FTR, EEI must generally be filed in the AES prior to the lading of the goods for departure. See 15 CFR § 30.4(b). The failure to timely file the EEI can result in the assessment of a civil penalty not to exceed \$1,100 for each day of delinquency, but not more than \$10,000 per violation. See 15 CFR § 30.71(b).

Comments to August 20, 2015 Notice of Proposed Rulemaking to Amend
the FTR with New Export Reporting Requirements
October 7, 2015
Page 3

exportation and inform them that part of the shipment was redirected post-departure; and provide CBP with a copy of the amended and new ITN transaction records.

If there is a location on the new EEI to include a reference to the original EEI, it is more likely that the CBP officer reviewing the new EEI transaction will see that there was an original EEI filed for the post departure split shipment, and not issue a notice of penalty for a late filed EEI. Thus, it decreases the burden on the export trade community to communicate with enforcement agencies on these types of shipments; and for enforcement agencies in the issuance of unnecessary penalties.

II. The Proposal to Include a New or Used Electronics Indicator Field in AES.

The NPR provides that the proposed New or Used Electronics indicator field will be used to collect information on trade flows and the disposal of used electronics to ensure compliance with Executive Order 13693, Planning for Federal Sustainability in the Next Decade, signed on March 19, 2015.

To be effective and to assist the export trade community to understand their obligations, we believe that Census needs to include clarifying definitions in the FTR as to what "electronics" are covered by the requirement and the meaning of "used."

Thank you for considering our comments.

Very truly yours,



George R. Tuttle, III
Law Offices of
GEORGE R. TUTTLE
A Professional Corporation



October 12th, 2015

Department of Commerce
Jennifer Jessup
Departmental Paperwork Clearance Officer
14th and Constitution Avenue, N.W., Room 6616
Washington, DC 20230

Subject: Census Bureau Comment Request, Automated Export System Additional Data Elements

Dear Ms. Jessup,

The Aerospace Industries Association (AIA) and our member companies welcome the opportunity to provide comment in response to the U.S. Census Bureau (Census) Notice and Comment Request (Vol. 80, No. 161, August 20, 2015). Census has identified its intention to publish a Notice of Proposed Rulemaking (NPR) to amend the Foreign Trade Regulations (FTR) to add two data elements in the Automated Export System (AES) and clarify reporting requirements. To support Census' drafting, AIA provides the following comments.

I. Data Elements

The first of two data element proposed is the creation of a new field in the AES to capture the Original Internal Transaction Number (ITN). Census has identified that this field will be optional and only used when an export filer has to create an additional AES record for a shipment that was previously filed. AIA requests Census include in its NPR, representative examples of common situations when this would be exercised. Examples will assist in understanding the volume of AES filings impacted and provide insight on the burden rate.

The second data element proposed is the addition of a field in the AES to identify whether the hardware being exported is New or Used Electronics. This is an optional field and will only be required *"for those who export electronics"*. The new field will assist Census in the tracking of trade patterns for used electronics. Census further identified the field's addition is to ensure compliance with Executive Order 13693, *Planning for Federal Sustainability in the Next Decade* (March 19, 2015). AIA believes this additional field will raise many questions by export filers, will result in inconsistent information, and ultimately will not meet the stated goals of its inclusion. We believe Census will collect incomplete information only offering a snapshot of electronics trade and will most likely consist of flawed data due to the vague nature of field description. We also find no connectivity of this data element field with the stated goal of ensuring environmental compliance. Therefore, AIA suggests that Census not add this field to the AES as outlined in the five points provided below.

a. Temporary Exports. The stated goal is to track trade flow and the destinations of used electronics. A New or Used Electronics field does not adequately consider situations where the goods

are leaving the United States only to eventually return. Although there exists an exemption from filing AES for most temporary shipments (15 CFR 30.37(q)), some temporary shipments require AES filings due to the licensing or exemption covering the shipment. Many AIA members manufacture products that fall under the controls of the International Traffic In Arms Regulation (ITAR) or have recently moved to the new “600 series” controls under the Export Administration Regulations (EAR). A majority of those products are not eligible for the AES temporary exemptions. Temporary shipments could negatively impact the data collection by capturing details for only half of the item’s path. If the goods ultimately return to the U.S., then the AES filing does not adequately represent the final destination or disposal of the used equipment; thereby generating an incomplete version of the trade flow of used electronics. Typical AIA member temporary exports include situations where company owned equipment temporarily leaves the U.S. to support international work and is returned to the same company when the work is concluded. Additionally, there are situations when licensed goods are shipped back to a manufacturer for repair only to return to the United States. Lastly, AIA members export defense systems and components to the U.S. military in international destinations. Those goods will eventually return to the United States.

The proposed field also does not consider the exportation of electronics that are consumed into larger systems and then retransferred or reexported to different destinations. The global supply chain can be very complex; the electronics may have a longer journey than what is identified in the AES filing at time of export from the United States. Census will have the first foreign destination on the electronics’ journey, but potentially not the final destination of the electronics as they are retransferred or reexported, through de minimis applications, to the next stop in the supply chain.

b. Defining electronics. There are different opinions on how to define electronics. Some may consider that only circuit board level components are electronics. Others will view TVs and computer tablets as electronics. Additionally, there are many products in today’s commerce that are made with some type of electronics (e.g., cell phones, refrigerators, helicopters, watches, cars). Filers may not know to what items Census is expecting the AES filing to capture in the New or Used Electronics field. The term ‘*electronics*’ is too vague and can be easily misinterpreted.

Additionally, “*those who export electronics*” is also an overly broad description of the specific group within industry Census is targeting. It is believed that these two general terms of reference will generate inconsistent and incomplete data entry by filers in the New or Used Electronics field, when it is completed. Such perceived inconsistencies suggest another reason Census will obtain flawed data.

c. \$2,500 threshold. In many instances, the average cost of everyday used electronics does not rise to the \$2,500 threshold required for an AES filing (15 CFR 30.2). Consider that companies who export new electronics typically ship in bulk or at a higher cost which trips the AES filing requirement. Used electronics are not normally shipped in this fashion and are more likely to be sent individually or in smaller numbers at a lower cost. These exports will most likely not rise to the AES filing requirement threshold. It is predicted that Census will obtain a skewed data set and the results will be insufficient to properly address the stated goal of tracking used electronics.

d. Relationship to Executive Order. AIA’s review of the Executive Order 13693, *Planning for Federal Sustainability in the Next Decade*, did not engender a connection to the addition of the New or Used Electronics field. Census identified that the data element will help “*to reduce the likelihood of negative impacts to the health and environment in developing countries*”. The Executive Order is focused on the Federal Government’s actions to “*increase efficiency and improve their environmental performance*”. Specifically, its focus is on what agencies can undertake to support the sustainability of

the environment in the United States. A search of the Executive Order for the terms '*developing*' or '*countries*' yielded no results. It is believed that Census misstated the intended goal of the Executive Order in the Federal Register Notice. AIA does not understand Census' connection of the new data element field to the Executive Order. They appear to be completely different. Furthermore, AIA cannot discern how tracking the exportation of new or used electronics will assist Federal agencies in lessening the environmental impact of their buildings and vehicle fleets. There is no proven causality between the tracking of used electronics to foreign destinations and the reduction of environmental footprints of Federal agencies. The lack of connectivity with the mission of the Executive Order provides for an additional reason this field should not be added to the AES. The argument presented for its inclusion in the AES to satisfy the Executive Order is baseless.

e. Optional. As field completion is optional, it is unclear what benefit Census will have from such skewed and incomplete data. As stated above, the results of the data collection will be insufficient to properly address the stated goal of tracking electronics.

II. ITDS

AIA is interested in the comments Census will provide on the International Trade Data System (ITDS) and looks forward to reviewing the details on implementing a "single window".

III. Conclusion

In conclusion, AIA requests Census remove from its draft NPR the optional field to identify New or Used Electronics. Not only will this data element not accurately track the destinations of used electronics, it will also do nothing to support the President's Executive Order 13693. AIA can find no practical utility for this data field collection.

Thank you for the opportunity to provide comments on the proposed NPR content and we look forward to continued dialogue with Census on this topic.

Best Regards,

A handwritten signature in black ink, appearing to read 'Remy Nathan', with a stylized flourish at the end.

Remy Nathan
Vice President – International Affairs
Aerospace Industries Association



October 19, 2015

Jennifer Jessup
Departmental Paperwork Clearance Officer
Department of Commerce, Room 6616
14th and Constitution Avenue NW
Washington, DC 20230

Dear Ms. Jessup:

The National Customs Brokers and Freight Forwarders Association of America Inc. ("NCBFAA") hereby submits these comments in response to the Census Bureau notice published in the Federal Register on August 20, 2015 on the proposed information collection of information through the Automated Export System ("AES").

The Notice requests comments on two proposed data elements: An Original Internal Transaction Number ("ITN") field and a "New or Used Electronics" indicator field, as well as the requirements for reporting certain types of licenses.

ADDING ORIGINAL INTERNAL TRANSACTION NUMBER FIELD

NCBFAA supports the addition of an "Original Internal Transaction Number ("ITN") field. We agree that this field will assist the enforcement agencies in distinguishing between true late filings and those that occur due to extenuating circumstances. Two examples are: 1) Shipments that are split in transit, generally because the goods have been resold in transit. These require an update to the initial Electronic Export Information ("EEI") filing, and then the filing of a second EEI. The second EEI always registers as a late filing; 2) On occasion, an EEI filer makes a mistake and inadvertently cancels a transaction (clerical error). Once cancelled, the transaction cannot be re-activated, therefore a new EEI is filed. This also registers as a late filing. In both instances, being able to refer to the initial ITN will allow the U.S. Government enforcement agencies, especially CBP who is authorized to enforce the Foreign Trade Regulations, to confirm that the initial transactions were, indeed, filed prior to export as required. This will save time for CBP in issuing penalties and the trade in having to explain the circumstances.

ADDING NEW OR USED ELECTRONICS INDICATOR FIELD

While NCBFAA understands the environmental concerns of the referenced executive order, and the low impact of simply checking a box, we recommend that you do not add this additional data collection element to AES. This requirement places the burden of



Page 2

“policing” on freight forwarders when acting in the capacity of “authorized filing agent”, especially considering that the term “electronics” is used very broadly on documentation provided to freight forwarders by the U.S. Principal Parties in Interest (“USPPI”). The authorized filing agent will be placed in a position of having to collect the information and explain the requirements to the exporting community. Authorized agents will also have to overcome the expectation that they should be able to make the determination themselves. Unless the requirement is tied to specific Schedule B / HTS codes, NCBFAA, representing freight forwarders who act in the capacity of “authorized agent” on a large volume of transactions, requests your consideration of the great additional burden that this will place on authorized filing agents and not implement the New/Used Electronics check box.

ADDING OFAC LICENSES TO 15 CFR 30.2(a)(1)(iv)

NCBFAA agrees that it will add clarity to name OFAC licenses in this section.

This concludes the NCBFAA comments. We appreciate the opportunity to present our comments and look forward to reviewing your forthcoming Notice of Proposed Rulemaking.

Sincerely,



Geoffrey Powell
NCBFAA President



Comment 7

Intel Corporation

2200 Mission College Blvd.
M/S RNB-5-125
Santa Clara, CA 95054-1537



October 19, 2015

Ms. Jennifer Jessup
Departmental Paperwork Clearance Officer
Room 6616
U.S. Department of Commerce
14th and Constitution Avenue, N.W.
Washington, DC 20230
jjessup@doc.gov

**RE: Proposed Information Collection; Comment Request; Automated Export System (AES) Program
(Federal Register Notice of August 20, 2015)**

Intel Corporation designs, manufactures, and sells advanced integrated digital technology platforms worldwide. It operates through PC Client Group, Data Center Group, Internet of Things Group, Mobile and Communications Group, Software and Services, Technology Manufacturing Group as well as other business units. Intel's platforms are used in various computing applications comprising notebooks, desktops, servers, tablets, smartphones, wireless and wired connectivity products, wearables, transportation systems, and retail devices.

Intel Corporation is submitting the following public comment in response to the request issued by the U.S. Department of Commerce's U.S. Census Bureau on proposed new information collection related to the Automated Export System.

The U.S. Census Bureau has proposed the addition of a new or used electronics indicator field which will be a mandatory field if electronics are exported.

Intel's Comments: If the Census Bureau is predicting an impact to only a "small" percentage of shipments, and the Executive Order cited in the Federal Register notice applies only to Federal Agencies, the need for the new or used electronics field does not appear justifiable in comparison with the burden to exporters.

If the Census Bureau proceeds with the new or used electronics indicator field, it should take into account the following items:

Under current regulations, exporters shipping to certain countries in Asia are required to make declarations through their commercial invoice and shipping documents whether any items in the shipment are used goods. Census should fully research and define the terms of "electronics" and "used" to ensure the definitions for each do not conflict with the import requirements that are part of the current international trade environment.

The proposed regulation does not specify how an item will be designated as an electronic item, and purports to only affect a small percentage of shipments. It is also unclear how Census arrives at the impact conclusion. Perhaps, it may only impact a small number of Government agencies, but the impact to the export community is much greater. The addition of the new field will certainly impact Intel, and we anticipate that such a field will impact almost every exporter in the high tech community.

We also request Census make clear that if this field is updated after the date of export that the update constitutes a correction and not an error.

Intel appreciates the opportunity to comment on the Proposed Information Collection and looks forward to continuing its cooperation with the U.S. Government in the area of export controls and compliance.

Best Regards,

Rebecca Conover

Rebecca Conover
Senior Manager, Global Export Compliance
Intel Corporation