

ATTACHMENT G

From: Andrew Reamer <areamer@gwu.edu>
Sent: Sunday, November 20, 2022 9:57 AM
To: Kiesha Downs (CENSUS/EMD FED) <kiesha.downs@census.gov>
Cc: Thomas J Smith (CENSUS/EMD FED) <Thomas.J.Smith@census.gov>
Subject: Draft ICR request -- Automated Export System (OMB Control #: 0607-0152)

Dear Ms. Downs,

On behalf of the American Economic Association (AEA) and the Industry Studies Association (ISA), I request a copy of the draft ICR for the Automated Export System (OMB Control #: 0607-0152), as invited by the [Federal Register](#).

Thank you and we look forward to seeing the draft data collection instrument and supporting statement. In the meantime, I have posted the following for AEA and ISA members: <https://www.aeaweb.org/forum/3275/automated-export-system-program-invites-comments-extension> and am happy to revise on the receipt of draft ICR materials.

Sincerely,

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PUBLIC SUBMISSION

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Automated Export System

Comment On: USBC-2022-0023-0001

Automated Export System 60-day FRN

Document: USBC-2022-0023-DRAFT-0002

Comment on FR Doc # 87

Submitter Information

Name: Anonymous Anonymous

General Comment

Please remove the redundant "State of origin" field from AES. By definition it is the same as the USPPi State. This redundant field leads to duplication, confusion and erroneous reporting by USPPIs.

Hello, Mr. Smith,

By copy of the attached e-mail received from Gerard Horner at the Census Bureau, I am sending this request to you regarding the recent announcement from your agency to begin generating an Informational Message in AES when the values in the State of Origin field and the state code in the USPPI address do not match.

1) If the values entered into both of these fields are supposed to match, is it possible to delete the requirement to report the Origin State?

Why are there two data elements in AES that are to be used to report the same value for the same purpose?

2) If there are times when the values in these two fields will be different, then why is there a need to generate an informational message to draw attention to this discrepancy?

As I interpret the requirements for reporting these two data elements in Section 30.6(a) of the FTR, their purpose seems to be redundant.

Their definitions seems to be identical. Please review and advise your comment by return.

(4) U.S. state of origin. The U.S. state of origin is the 2-character postal code for the state in which the goods begin their journey to the port of export. For example, a shipment covering goods laden aboard a truck at a warehouse in Georgia for transport to Florida for loading onto a vessel for export to a foreign country shall show Georgia as the state of origin. The U.S. state of origin may be different from the U.S. state where the goods were produced, mined, or grown. For shipments of multi-state origin, reported as a single shipment, report the U.S. state of the commodity with the greatest value. If such information is not known, report the state in which the commodities are consolidated for export.

(a) Mandatory data elements are as follows:

(1) USPPI. The person or legal entity in the United States that receives the primary benefit, monetary or otherwise, from the export transaction. Generally, that person or entity is the U.S. seller, manufacturer, or order party, or the foreign entity while in the United States when purchasing or obtaining the goods for export. The name, address, identification number, and contact information of the USPPI shall be reported to the AES as follows:

(i) Name of the USPPI. In all export transactions, the name listed in the USPPI field in the EEI shall be the USPPI in the transaction. (See [§30.1](#) for the definition of the USPPI and [§30.3](#) for details on the USPPI's reporting responsibilities.)

(ii) Address of the USPPI. In all EEI filings, the USPPI shall report the address or location (no post office box number) from which the goods actually begin the journey to the port of export even if the USPPI does not own/lease the facility. For example, the EEI covering goods laden aboard a truck at a warehouse in Georgia for transport to Florida for loading onto a vessel for export to a foreign country shall show the address of the warehouse in Georgia. For shipments with multiple origins, report the address from which the commodity with the greatest value begins its export journey. If such information is not known, report the address in the state where the commodities are consolidated for export.

(iii) USPPI identification number. Report the EIN or DUNS number of the USPPI. If the USPPI has only one EIN, report that EIN. If the USPPI has more than one EIN, report the EIN that the USPPI uses to report employee wages and withholdings, and not the EIN used to report only company earnings or receipts. Use of another company's EIN is prohibited. The appropriate Party ID Type code shall be reported to the AES. If a foreign entity is in the United States at the time goods are purchased or obtained for export, the foreign entity is the USPPI. In such situations, when the foreign entity does not have an EIN, the authorized agent shall report a border crossing number, passport number, or any number assigned by CBP on behalf of the foreign entity.

(iv) USPPI contact information. The person who has the most knowledge regarding the specific shipment or related export controls.

Also, why does the FTR specify that the shipment value be reported in terms of FOB value (commodity value + transportation charges + other charges to the port of export)? Why does the Census Bureau want this information? It would seem to me that the FOB value obfuscates the actual value of the commodities.

Best regards,

Robert Feke

Senior Director | Corporate Trade & Compliance Group

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From: Liz Gant <liz@shapiro.com>
Sent: Wednesday, January 18, 2023 9:43 AM
To: Thomas J Smith (CENSUS/EMD FED) <Thomas.J.Smith@census.gov>
Subject: Automated Export System Program

Good Morning,

Reference:

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Automated Export System Program

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87 FR 70777

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The Census Bureau published a Notice of Proposed Rulemaking (NPRM) on December 15, 2021. The NPRM proposed to add a conditional data element, country of origin, in the AES: "New Filing Requirement and Clarifications to Current Requirements", Docket No. 211117-0237; RIN0607-AA59.

Comments were submitted by The National Customs Brokers and Forwarders Association, as well as the RPTAC (RPTAC confidential) to MS. Keisha Downs. (Attached for your convenience) I wish to reiterate those comments to the Office of Management and Budget (OMB) so these are taken into consideration for the additional costs and burden it will place on USPP's and forwarders. We don't feel the country of origin proposal will provide accurate statistics representing origin.

Sincerely,
Elizabeth K. Gant

Liz Gant

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BEFORE THE
UNITED STATES CENSUS BUREAU

Comments in Response to the Notice of Proposed Rulemaking regarding “Foreign Trade Regulations: New Filing Requirement and Clarifications to Current Requirements.”

Docket No. 211117-0237; RIN0607-AA59

Dated December 15, 2021

February 14, 2022

The National Customs Brokers and Forwarders Association of America, Inc. (“NCBFAA” or the “Association”) submits the following comments to the United States Census Bureau (“Census”) in response to Census’s Notice of Proposed Rulemaking (“NPRM”), published in the Federal Register at 86 Fed. Reg. 71,187 (Dec. 15, 2021). The NPRM seeks comments on adding a new conditional data element, “Country of Origin,” which would be reported as part of the Electronic Export Information (“EEI”) transmission to the Automated Export System (“AES”) whenever the commodity is coded “F” (Foreign).

NCBFAA reviewed the potential benefits of having Country of Origin (“COO”) data available pursuant to the categories stated in the NPRM:

1. Identifying asymmetry in imports and exports, while also assisting in Census Reconciliation Studies.
2. Monitoring Trade Agreements and Formulating Trade Policy.
3. Assessing US Supply Chain Issues

The following two key facts also impact the Association’s comments:

1. The NPRM states that in the case of multiple origins for a single commodity (HTS or Schedule B code), only one COO will be required, that being the country representing the greatest value.
2. 15 CFR 30 defines “Foreign” as: “Goods that were originally grown, produced, or manufactured in a foreign country, then subsequently entered into the United States, admitted to a U.S. FTZ, or entered into a CBP bonded warehouse, but not substantially

transformed in form or condition by further processing or manufacturing in the United States, U.S. FTZs, Puerto Rico, or the U.S. Virgin Islands.”

With that background, the following constitutes the Association’s comments with respect to the issues raised in the NPRM.

I. Business Practice Challenges Should This Change Be Implemented

The Association represents more than 1,000 member companies, representing the nation’s leading freight forwarders and customs brokers. Freight forwarders, as authorized agents of their principals, transmit a large percentage of EEI filings for large multinational companies, medium companies and small companies for standard and routed export transactions. In this capacity, the freight forwarder (EEI filer) must collect all the data elements from the U.S. Principal Party in Interest (“USPPI”).

Regarding the availability of the COO information, the NPRM states that Census surveyed the top exporters and forwarders, representing 10% of the value of goods reported as “Foreign” origin, who advised that the data element would be readily available. Freight forwarders, however, work with thousands of individual smaller companies which represent most of the remaining 90%. NCBFAA members’ experiences working with these exporters inform the Association that many of these companies will not have the information readily available and they will have to develop processes to obtain that information and manage their inventories.

To highlight a few challenges:

USPPI Challenges

- a. Setting up a process to identify the country of origin especially on goods that they source domestically:

The USPPI may be sourcing products domestically from companies who themselves source domestically. While larger companies might have databases or other means of tracking and recording countries of origin, medium companies, small companies, and occasional exporters may not have origin tracking capabilities. It would be very time consuming for these companies to find a way to track the countries of origin for their products in an organized manner that would allow them to have the information readily available for each export’s EEI filing.

- b. Maintaining physical inventory by country:

Companies may source the exact same product from several sources, foreign and domestic. Assuming that the USPPI already separates domestically sourced products from foreign sourced products, they would have to take that a step further to separate

foreign sourced inventory by country, and then, at the time of export, determine which country represents the greatest value if they are self-filers or include the country of origin on their documentation to the EEI filer. This could represent a real challenge to smaller businesses.

Some companies might maintain their inventory using allowed accounting methods (such as First In / First Out (“FIFO”)). In those cases, their systems might not identify the actual COO. For example, if 5,000 items from China and a second batch from Vietnam were comingled in a bin and at the time of export, 2,500 items were shipped out, the COO declared may be China due to the accounting method. However, the goods shipped out may actually be a combination of Chinese and Vietnamese products or wholly Vietnamese products. Aside from providing Census with erroneous information, this also raises a concern that CBP at the U.S. Port of Export may assess penalties against the filer based on the new data element if the country does not match what was declared. Because of that concern, NCBFAA respectfully requests that the regulations include language stating that reporting the country incorrectly for export statistics would not create liability for penalty as it does not relate to CBP import or destination country rules of origin. Based on NCBFAA’s experience with other data elements, the Association does not believe that CBP guidance to their field operations would suffice.

EEI Filer Challenges

a. Educating exporters at the time of export:

It goes without saying that a great deal of outreach would have to be conducted well in advance of implementing this new data element. The Association understands that Census would arrange this outreach as they have done for previous changes to the requirements. Despite excellent Census outreach efforts in the past on the regulations and EEI filing requirements in general, freight forwarders find themselves tasked with educating companies that did not know that they had to be “reached” one company/one individual at a time. Because a freight forwarder normally does not become aware of a shipment until the time that it is being scheduled for export, it is at this point that the education process begins for the less educated exporter. This is already a time-consuming process at a critical point in the supply chain, and it sometimes results in delays and costs associated with those delays. Explaining this new requirement and fielding the inevitable questions regarding components, co-mingled products, goods consisting of multi-origin components such as active pharmaceutical ingredients (“API”), guiding them on how to obtain the country of origin, and explaining if/how those questions relate to the new requirement in consideration of the definition of “Foreign” in the Foreign Trade Regulations (“FTR”) would add significant time to an already burdensome process.

b. Organizing the commodity information for filing on large multi-commodity transactions:

The EEI filer must sort through data received from the USPPI on multi-commodity transactions to determine what must be filed. For these multi-commodity transactions,

many USPPIs provide a Shipper's Letter of Instruction ("SLI") or Commercial Invoice that may list hundreds of line items in no apparent order, licensing information, value, and D/F indicators. In most cases these are PDF documents and the USPII hesitates to share a spreadsheet that can be manipulated by the EEI filer. The EEI filer then must transfer the data manually to a spreadsheet that can be manipulated – creating a "summary invoice." Adding another level to that sort, i.e., adding the COO, will complicate this already time-consuming process considerably, especially if there are multiple countries of origin for the same HTS/Schedule B code.

II. Systems / Programming

The programming of a single data element triggered by selecting "F" in an EEI transaction is not too complex. Nevertheless, NCBFAA cannot speak for all of its individual members to confirm that a 12-to-18-month period is long enough. NCBFAA members use a wide variety of software programs to file their EEI, some self-programmed and others through software providers. It is important to take into consideration that many companies have prioritized programming processes that would aid them with supply chain disruptions, therefore, it may be difficult to schedule in additional programming changes for the foreseeable future.

If Census were to determine that it is necessary to collect all the COOs for a single HTS/Schedule B code in order to give accurate statistics and satisfy the purposes stated in the NPRM, NCBFAA emphasizes that such a requirement would be complicated, costly, and a substantial impact on processes.

III. Benefits of Gathering the Information

NCBFAA has given careful consideration to the potential benefits stated in the NPRM. The Association understands that, from a Census perspective, there may be benefits in obtaining this information such as allowing Census to work with the data to determine if and how much benefit is derived from obtaining the limited data. For the purposes and goals listed in the NPRM, and for satisfying stakeholder requests, gathering a single COO does not provide full, accurate data and would substantially water down the potential benefits.

If doing a reconciliation of data, whether comparing US export data to US import data for specific reconciliation requests, comparing data to industry segment data, or comparing data to the destination foreign country's data for specific commodities, there would be substantial gaps. Further, the definition of "Foreign" in the FTR may not align with the methods of determining COO for goods entering the US or for goods entering another country. In NCBFAA's view, the results would already be skewed regardless of the other issues stated below.

Examples of gaps, based on NCBFAA's understanding of the processes and issues, include:

- a. Missing COOs for goods that are substantially transformed, resulting in a new HTS/Schedule B code, would qualify as "D" Domestic based on the definition of "Foreign" in the FTR.

- b. Transactions that include a combination of foreign and domestic components that were substantially transformed in the US would be reported as a Domestic product based on the definition of “Foreign.”
- c. Missing COOs when there are multiple COOs for components or ingredients for a single HTS/Schedule B. This issue is especially prevalent in eCommerce transactions where the importer of record may be a foreign party.
- d. Missing COOs when there are multiple countries of origin for a single HTS / Schedule B since only the COO representing the greatest value will be reported.
- e. Obtaining incorrect COO if exporters are using allowed inventory accounting methods.
- f. Missing declarations for all transactions exempted from EEI filing.
- g. USPPIs declaring goods as “D” Domestic simply because they purchased the product in the US. The Association would not be surprised if the Census statistics for values declared as “F” Foreign do not reflect the full value of foreign goods subsequently re-exported. EEI filers would have no reason to question a USPPI who reports their product as “D” Domestic.
- h. Not being able to use the data for AD/CVD purposes, which may be specific to a certain country or to a specific manufacturer. If there are multiple COOs for a particular line and a filer reports the one representing the greatest value, the filer may not be reporting the one that is subject to AD/CVD.

Additionally, NCBFAA reviewed the industry to identify areas that could also benefit from this data. The Association discussed whether there would be a potential benefit to this data in supporting drawback claims, but, for the same reasons stated above, not collecting all of the COOs would water down and remove any potential benefit.

IV. Recommendation Regarding Adding Country of Origin to the EEI Filing

Before instituting a wide-ranging change in the EEI filing that would not fully accomplish the goals noted in the NPRM, NCBFAA recommends that Census conducts additional in-depth research to determine if there are other sources for this information at a higher level of accuracy before taking any further action. The ongoing and extreme global supply chain challenges and COVID-related staffing shortages have impacted importing and exporting companies, freight forwarders and brokers. This proposed change in process would greatly burden the industry and be acutely felt by small and medium sized enterprises. NCBFAA’s recommendation would be to exhaust all other areas to obtain data before asking for this data element in the EEI, which would not give Census the necessary data required to achieve the purposes set forth in the NPRM.

NCBFAA anticipates that once Census has the opportunity to work with the limited data, it will conclude that the need for the full COO data is apparent. The Association emphatically

does not recommend that Census attempts to gather all COO data through EEI filings because that process would be extremely complicated and unduly burdensome, as previously stated.

NCBFAA hereby provides some thoughts on suggested data sources:

- a. Utilize Customs entry information to obtain country of origin information.
- b. Research whether or not drawback data in conjunction with Customs Entry data might be valuable. (The Association notes, however, that there is not always a drawback claim on every item that is reexported.)
- c. Review the data that Census is already receiving on imports. The Microanalysis Branch sends out commodity verifications on imported goods. As such, NCBFAA understands that the Microanalysis Branch likely receives data from CBP. There may be additional branches within Census or the Department of Commerce that are also receiving data from CBP. If those branches are not already receiving the COO data in those feeds, perhaps that field can be added as a part of the requests.
- d. If the issues are specific to certain commodities, NCBFAA respectfully recommends that Census consults with the appropriate stakeholders to determine the best means for gathering data for those specific trades.

In closing on the topic of adding COO, NCBFAA reemphasizes that should Census determine that it is necessary to collect all the COOs for a single HTS/Schedule B code in order to give accurate statistics and satisfy the purposes stated in the NPRM, such a requirement would be complicated, costly, and have a substantial impact on processes.


V. Other Regulatory Amendments

Regarding 15 CFR 30.6(a)(1)(iii), clarifying that when the DUNS is reported as the USPPID type, the EIN is also required, NCBFAA has the following comment:

NCBFAA appreciates that Census has clarified this requirement, which has been a mystery to most EEI filers. However, many EEI transmission software systems are not programmed to accommodate this requirement. In many systems the user would select filer type as either DUNS or EIN and then enter a number. Selecting the DUNS option alone fails so users typically select the “EIN” option and then enter a DUNS number. Alternatively, filers will obtain an EIN and only report that number. Therefore, the practice is that many, if not most, filers do not report both the DUNS and EIN. This has raised a question for us. If Census is receiving the EIN, why is the DUNS still needed? It is unlikely, even with this clarification, that EEI filers will begin to transmit both DUNS and EIN or that software providers will change their systems. It would be helpful if Census could provide further information on the reason and value of receiving the DUNS number.

This concludes the NCBFAA's comments. NCBFAA appreciates the opportunity to present its comments to Census and hopes that these comments will assist Census in further evaluating the effectiveness of collecting Country of Origin in the EEI transmission. Please do not hesitate to contact the undersigned if Census has any questions on these comments.

Respectfully submitted,


Jan Fields,
President

Author Full Name : Anonymous**Received Date :** 02/15/2023 03:51 PM**Comments Received :**

Sir / Madam: In reference to OMB Control Number 0607-0152, our position is AGAINST the proposed rule. The process for AES export filing is already very granular for our company. We ship from more than 40 locations in the US covering three business units each making vastly different products. Though much of our export paperwork is generated through an ERP, further breaking down of Foreign Origin HTS Codes to the country level will require: 1) extensive training of all shipping locations, 2) more time in processing each AES transaction, 3) costly programming changes to our ERP. In the ever-tightening regulatory and economic environment we find ourselves in, this proposed rule will cause undue burden on our business. Thank you.