RETAIL INDUSTRY LEADERS ASSOCIATION

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Dr. Steven D. Dillingham
Director, U.S. Census Bureau
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Re: Request for Public Comments on the Overall Impact of the Removal of Electronic Export Information (EEI) Filing Requirements for Shipments Between the United States and Puerto Rico and the U.S. Virgin Islands (Docket No. 200810-0213)

Dear Dr. Dillingham,

The Retail Industry Leaders Association (RILA) appreciates the opportunity to comment on the Request for Public Comments on the Overall Impact of the Removal of Electronic Export Information (EEI) Filing Requirements for Shipments Between the United States and Puerto Rico and the U.S. Virgin Islands (Docket No. 200810-0213) issued by the Department of Commerce on September 17, 2020.

RILA is the trade association of the world's largest, most innovative, and recognizable retail companies and brands. We convene decision-makers, advocate for the industry, and promote operational excellence and innovation. Our aim is to elevate a dynamic industry by transforming the environment in which retailers operate. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than $1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad. RILA's membership includes some of the largest importers in the United States.

RILA, and our members, appreciate the Census Bureau's willingness to reexamine a current EEI filing requirement between the United States and Puerto Rico and the U.S. Virgin Islands (USVI), which creates an unnecessary administrative and financial burden on retailers and impedes commerce between the U.S. mainland and its territories. As noted in the Census Bureau's Federal Register Notice, the current EEI filing requirements treat Puerto Rico and the USVI as if they are foreign countries, which is inconsistent with the Census Bureau's treatment of other U.S. territories and how the U.S. government otherwise treats shipments to these territories. We believe this incongruity, coupled with the substantial burden the requirement places on industry, warrants the full elimination of the EEI filing requirement from shipments between the U.S. and Puerto Rico and the USVI.

Creating Consistent Treatment. The requirement to file EEI between the U.S. mainland and Puerto Rico and the USVI treats these shipments like exports to a foreign country. Yet both are territories of the United States, and Puerto Rico is also part of the U.S. customs territory.[1] This treatment is inconsistent with other Census EEI requirements. For example, the Census Bureau does not require the filing of EEI for shipments between the U.S. mainland and Alaska or Hawaii, between the U.S. mainland and Guam or other Pacific islands, or even for shipments to Canada – a foreign country. This inconsistency places additional burdens on shipments to these territories, inevitably impeding trade.

Further, this treatment is inconsistent with how the Commerce Department otherwise treats Puerto Rico and the USVI. For example, the International Trade Administration has clearly stated that as a U.S. territory, "shipments to Puerto Rico are not considered exports, so duties are not applied."[2] Shipments to the USVI are also exempt from duties,[3] consistent with other U.S. territories. In addition, the Bureau of Industry and Security's Export Administration Regulations (EAR) – which set forth whether dual-use items (i.e., items having both commercial and military or proliferation applications) require an export license – do not consider shipments to Puerto Rico to be exports. It is unclear why the Census Bureau should treat Puerto Rico any differently than other parts of the Commerce Department.

While not a state, Puerto Rico has been treated as a state by the three branches of the federal government in many contexts including the regulation of interstate commerce under the Constitution's Commerce Clause. Puerto Rico, as a U.S. territory, is part of the United States-Mexico-Canada Agreement and the Dominican Republic-Central America Free Trade Agreement. We therefore urge the Census Bureau to adopt consistent treatment of Puerto Rico and the USVI by eliminating the EEI filing requirement.

Improving Supply Chain Operations. The EEI filing requirements inhibit supply chain operations between the mainland and Puerto Rico and the USVI, resulting in delayed shipments and decreased accessibility to critical products and goods for U.S. citizens and consumers in these territories. For example, during the 2017 hurricane season, one RILA member worked tirelessly to supply Puerto Ricans with water and other basic necessities but was met with delays and obstacles tied to ensuring compliance with the onerous EEI requirements. Further, many retailers have store locations or hubs in both Puerto Rico and

[1] 19 C.F.R. 101.1.

[2] *See* International Trade Administration Guidance on Shipments to Puerto Rico and Other U.S. Territories, *available at* https://www.export.gov/article2?id=Shipping-to-Puerto-Rico-and-other-U-S-Territories (last visited Nov. 5, 2020).

[3] *Id.*

the USVI, requiring a very large flow of product to continually re-stock. Delays in shipments, especially during the current pandemic, deprive U.S. citizens of critical goods that they need for their comfort, health, and safety. Lifting the EEI requirements between the U.S. mainland and Puerto Rico and the USVI will remove red tape and contribute to a more streamlined supply chain, putting these U.S. territories on par with others.

Eliminating a Financial Burden for American Businesses. The need to file EEI for shipments between the mainland and Puerto Rico and the USVI also places economic burdens on exporters. It delays shipments as filers await the Automated Export System (AES) Internal Transaction Number (ITN) (i.e., the number assigned to a shipment confirming that AES has accepted the EEI and has it on file). In addition to delaying shipments, the need to dedicate staff or hire additional personnel to manage the EEI filings increases labor costs for retailers. For instance, several retailers reported that they spend tens of thousands of dollars – and some hundreds of thousands of dollars – annually on labor costs associated with filing EEI between the U.S. mainland and Puerto Rico and the USVI, and they spend an additional several hundred thousand dollars on administrative costs associated with product classifications necessitated by the filing requirement. As a further example, one retailer reported that it spends 1,092 hours annually applying Schedule B and creating a detailed Shipper's Letter of Instruction and commercial invoice for purposes of the filing requirement.

Without question, eliminating the need to apply a Schedule B would result in an enormous cost and time savings for our members. This would be welcome relief for an industry that has been battered by the COVID-19 pandemic and ensuing recession. The unprecedented loss of revenue tied to government-mandated closures and decreased consumer spending has left many American businesses struggling financially. The costs that will be saved from lifting the EEI requirements will allow American retailers to reallocate their money to priorities such as keeping employees on the payroll, reconfiguring business operations to meet rapidly evolving consumer demands, and ensuring that their stores are retrofitted to be safe for those who work and shop there.

Alternative means of tracking economic activity between the mainland and Puerto Rico, similar to those used among the States, are available that would be less burdensome on American companies. The Government of Puerto Rico's SURI system (Sistema Unificado de Rentas Internas) is used by merchants to report value and related information for all products imported into Puerto Rico on a monthly basis for purposes of calculating sales and use taxes. The information collected by SURI could be leveraged to satisfy the current EEI requirement.

Promote Sustainability. A major frustration with the current EEI filing process is that it requires printed documentation on shipments, resulting in a substantial use of paper. Our membership is on the vanguard of sustainable practices and have set high internal goals for ensuring that their operations have a minimal impact on the environment in which they operate. Retailers are always seeking innovations and research that will allow them to serve their customers effectively and efficiently while also maintaining sustainable supply chains. However, the excessive use of paper products to fulfill EEI requirements for Puerto Rico and the USVI undercuts the retail industry's high-reaching sustainability goals. By lifting the EEI requirements and removing the requirement for printed documentation on shipments to U.S. territories, the Census Bureau can support the retail industry's efforts to minimize waste in their supply chains.

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In conclusion, we urge the Census Bureau to eliminate the current EEI filing requirements on shipments between the United States and Puerto Rico and the USVI. Doing so will create more consistent treatment of these U.S. territories, eliminate red tape and streamline supply chain operations, increase accessibility and affordability of critical goods for U.S. citizens, relieve the unnecessary financial burden on American businesses, and promote hard-fought sustainability efforts. We thank the Census Bureau for conducting this review and for giving us the opportunity to provide insight on behalf of our membership.

Sincerely,

Blake Harden

Blake Harden
Vice President, International Trade
Retail Industry Leaders Association