

Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Harold M. Singer,
Acting Executive Director Regulations and
Rulings, Office of International Trade

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BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Entry Summary, Accounts and Revenue (ESAR) Test of Automated Entry Summary Types 51 and 52 and Certain Modes of Transportation

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to modify the National Customs Automation Program (NCAP) test concerning the Entry Summary, Accounts and Revenue (ESAR) test program in the Automated Commercial Environment (ACE) to allow importers and brokers to file electronically entry summary data for entry types 51 and 52, in addition to entry types 01, 03, and 11 that are already available for electronic filing, for merchandise arriving by truck, rail, vessel, and air, as well as arriving by mail, pedestrian, and passenger (hand-carried).

DATES: The ACE ESAR test modifications set forth in this document will begin on or about November 20, 2015. This test will continue until concluded by way of a document published in the **Federal Register**. Public comments are invited and will be accepted for the duration of the test.

ADDRESSES: Comments concerning this notice and any aspect of this test may be submitted at any time during the test via email to Josephine Baiamonte, Director, Business Transformation, ACE Business Office, Office of International Trade at josephine.baiamonte@cbp.dhs.gov. In the subject line of your email message, please use, "*Comment on Expansion of Automated Entry Summary for Entry Types 51 and 52.*"

FOR FURTHER INFORMATION CONTACT: For technical questions related to the Automated Commercial Environment (ACE) or Automated Broker Interface

(ABI) transmissions, contact your assigned client representative. Interested parties without an assigned client representative should direct their questions to Steven Zaccaro at steven.j.zaccaro@cbp.dhs.gov with the subject line heading "*Expansion of Automated Entry Summary for Entry Types 51 and 52-Request to Participate.*"

SUPPLEMENTARY INFORMATION:

I. Background

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization (Customs Modernization Act), in the North American Free Trade Agreement Implementation Act, Public Law 103-182, 107 Stat. 2057 (19 U.S.C. 1411). Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for processing commercial trade data which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions.

CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace specific legacy ACS functions. Each release will begin with a test and, if the test is successful, will end with the mandatory use of the new ACE feature, thus retiring the legacy ACS function. Each release builds on previous releases and sets forth the foundation for subsequent releases.

For the convenience of the public, a chronological listing of **Federal Register** publications detailing ACE test developments is set forth below in Section XIV, entitled, "Development of ACE Prototypes." The procedures and criteria related to participation in the prior ACE test pilots remain in effect unless otherwise explicitly changed by this or subsequent notices published in the **Federal Register**.

II. Authorization for the Test

The Customs Modernization Act provides the Commissioner of CBP with authority to conduct limited test

programs or procedures designed to evaluate planned components of the NCAP. The ACE ESAR Test, as modified in this notice, is authorized pursuant to § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)), which provides for the testing of NCAP programs or procedures. See Treasury Decision (T.D.) 95-21, 60 FR 14211 (March 16, 1995).

III. Modifications of ACE ESAR Test

On October 18, 2007, CBP published a General Notice in the **Federal Register** (72 FR 59105) announcing CBP's plan to conduct a new test concerning ACE entry summary, accounts and revenue capabilities, that provided for enhanced account management functions for ACE Portal Accounts and expanding the universe of ACE account types. That test notice is commonly referred to as ESAR I. As stated in that notice, ACE is now the lead system for CBP-required master data elements (*e.g.*, company name, address, and point of contact) as well as related reference files (*e.g.*, country code, port code, manufacturer ID, and gold currency exchange rate and conversion calculator).

This notice announces that CBP will modify the ESAR test in order to allow brokers and importers, who are also ACE participants, to file electronically, for air, ocean, rail, and truck modes of transportation, as well as for mail, pedestrian, and passenger (hand-carried) modes of transportation, the ACE entry summary for entry type 51 (*i.e.*, merchandise imported by the Defense Contract Management Command (DCMAO NY) Military Only), and for entry type 52 (*i.e.*, Government—Dutiable (other than DCMAO NY)), in addition to entry types 01, 03, and 11.

IV. Eligibility Requirements

Importer and broker volunteers who wish to participate in this test must have an ACE Portal Account (*see* notices referenced below relating to the establishment of ACE Portal Accounts). ABI volunteers wishing to participate in this test must:

- (1) Use statement or single pay for payment processing; and
- (2) Use a software package that has completed ABI certification testing for ACE.

Test participants must meet all the eligibility criteria described in this document in order to participate in the test program.

V. Test Participation Selection Criteria

The ACE ESAR test is open to all importers and customs brokers filing ACE Entry Summaries for cargo

transported by the air, ocean, rail, and truck modes of transportation as well as by the mail, pedestrian, and passenger (hand-carried) modes of transportation. Any party seeking to participate in this test must provide CBP, as part of its request to participate, its filer code and the port(s) at which it is interested in filing ACE entry summary data. ACE entry summary data may be submitted at all ports of entry for entry types 51 and 52 as of November 20, 2015, and for authorized entry types, *i.e.*, entry types 01, 03, 11, which are already available for electronic filing.

Applicants will be notified by a CBP client representative if they have been selected to participate in this test.

VI. Filing Capabilities and Requirements

The filing capabilities and functionalities for the ACE ESAR tests that were set forth in previous **Federal Register** notices (*i.e.*, 78 FR 69434 (November 19, 2013), 76 FR 37136 (June 24, 2011), 74 FR 69129 (December 30, 2009), 74 FR 9826 (March 6, 2009), 73 FR 50337 (August 26, 2008), and 72 FR 59105 (October 18, 2008)) continue to apply and are now expanded to include ACE-participating importers and customs brokers filing entry summaries for type 51 and 52 entries, for cargo conveyances arriving by any mode of transportation, including by the air, ocean, rail, and truck modes of transportation. In lieu of filing the entry in ACE Cargo Release test participants may file an ACE Entry Summary certified for release.

VII. Test Duration

This ACE Entry Summary, Accounts and Revenue test, as modified, will begin on or about November 20, 2015. This test will conclude by way of a document published in the **Federal Register**.

VIII. Comments

All interested parties are invited to comment on any aspect of this test at any time. CBP requests comments and feedback on all aspects of this test, including the design, conduct and implementation of the test, in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement this program.

IX. Waiver of Regulations Under This Test

For purposes of this test, any provision in title 19 of the Code of Federal Regulations including, but not limited to, the provisions found in parts 141, 142, 143, and 149 thereof relating to entry summary filing and processing

that are inconsistent with the requirements set forth in this notice are waived for the duration of the test. See 19 CFR 101.9(b). This document does not waive any recordkeeping requirements found in part 163 of title 19 of the Code of Federal Regulations (19 CFR part 163) and the Appendix to part 163 (commonly known as the “(a)(1)(A) list”).

X. Previous Notices

All requirements, terms and conditions, and aspects of the ACE test discussed in previous notices are hereby incorporated by reference into this notice and continue to be applicable, unless changed by this notice.

XI. Paperwork Reduction Act

The collection of information contained in this ACE Entry Summary, Accounts and Revenue test has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) and assigned OMB control number 1651-0022. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

XII. Confidentiality

All data submitted and entered into ACE is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law. As stated in previous notices, participation in this or any of the previous ACE tests is not confidential and upon a written Freedom of Information Act (FOIA) request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

XIII. Misconduct Under the Test

A test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, or discontinuance from participation in this test for any of the following:

- (1) Failure to follow the terms and conditions of this test;
- (2) Failure to exercise reasonable care in the execution of participant obligations;
- (3) Failure to abide by applicable laws and regulations that have not been waived; or
- (4) Failure to deposit duties or fees in a timely manner.

If the Director, Business Transformation, ACE Business Office (ABO), Office of International Trade, finds that there is a basis for

discontinuance of test participation privileges, the test participant will be provided a written notice proposing the discontinuance with a description of the facts or conduct warranting the action. The test participant will be offered the opportunity to appeal the Director's decision in writing within 10 calendar days of receipt of the written notice. The appeal must be submitted to Acting Executive Director, ABO, Office of International Trade, by emailing Deborah.Augustin@cbp.dhs.gov.

The Acting Executive Director will issue a decision in writing on the proposed action within 30 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed discontinuance of a test participant's privileges will not take effect unless the appeal process under this paragraph has been concluded with a written decision adverse to the test participant.

In the case of willfulness or those in which public health, interest, or safety so requires, the Director, Business Transformation, ABO, Office of International Trade, may immediately discontinue the test participant's privileges upon written notice to the test participant. The notice will contain a description of the facts or conduct warranting the immediate action. The test participant will be offered the opportunity to appeal the Director's decision within 10 calendar days of receipt of the written notice providing for immediate discontinuance. The appeal must be submitted to Acting Executive Director, ABO, Office of International Trade, by emailing Deborah.Augustin@cbp.dhs.gov. The immediate discontinuance will remain in effect during the appeal period. The Executive Director will issue a decision in writing on the discontinuance within 15 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

XIV. Development of ACE Prototypes

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004); 70 FR 5199 (February 1, 2005).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).

- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).
- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the

ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).

- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).

- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).

- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release to Allow Importers and Brokers to Certify From ACE Entry Summary: 79 FR 24744 (May 1, 2014).

- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Truck Carriers: 79 FR 25142 (May 2, 2014).

- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System: 79 FR 36083 (June 25, 2014).

- Announcement of eBond Test: 79 FR 70881 (November 28, 2014).

- eBond Test Modifications and Clarifications: Continuous Bond Executed Prior to or Outside the eBond Test May Be Converted to an eBond by the Surety and Principal, Termination of an eBond by Filing Identification Number, and Email Address Correction: 80 FR 899 (January 7, 2015).

- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System Relating to Animal and Plant Health Inspection Service (APHIS) Document Submissions: 80 FR 5126 (January 30, 2015).

- Modification of National Customs Automation Program (NCAP) Test Concerning the use of Partner Government Agency Message Set through the Automated Commercial Environment (ACE) for the Submission of Certain Data Required by the Environmental Protection Agency (EPA): 80 FR 6098 (February 4, 2015).

- Announcement of Modification of ACE Cargo Release Test to Permit the Combined Filing of Cargo Release and Importer Security Filing (ISF) Data: 80 FR 7487 (February 10, 2015).

- Modification of NCAP Test Concerning ACE Cargo Release for Type 03 Entries and Advanced Capabilities for Truck Carriers: 80 FR 16414 (March 27, 2015).

- Automated Commercial Environment (ACE) Export Manifest for Air Cargo Test: 80 FR 39790 (July 10, 2015).

- National Customs Automation Program (NCAP) Concerning Remote Location Filing Entry Procedures in the Automated Commercial Environment (ACE) and the Use of the Document Image System for the Submission of Invoices and the Use of eBonds for the Transmission of Single Transaction Bonds: 80 FR 40079 (July 13, 2015).

- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Partner Government Agency (PGA) Message Set Regarding Types of Transportation Modes and Certain Data Required by the National Highway Traffic Safety Administration (NHTSA): 80 FR 47938 (August 10, 2015).

- Modification of National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Food and Drug Administration (FDA) Using the Partner Government Agency (PGA) Message Set Through the Automated Commercial Environment (ACE): 80 FR 52051 (August 27, 2015).

- Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test: 80 FR 54305 (September 7, 2015).

Dated: October 15, 2015.

Cynthia F. Whittenburg,
Acting Assistant Commissioner, Office of International Trade.

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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Announcement of the Modification of the National Customs Automation Program Test Concerning the Automated Commercial Environment Portal Account To Establish the Exporter Portal Account

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces U.S. Custom and Border Protection's (CBP's) plan to modify the National