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## **DEPARTMENT OF HOMELAND SECURITY**

### **U.S. Customs and Border Protection**

#### **Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Entry Type 52 and Certain Other 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 Cargo Release in the Automated Commercial Environment (ACE) to allow importers and brokers to file electronically entry type 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 Cargo Release test modifications set forth in this document will begin on or about [INSERT 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. 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](mailto:josephine.baiamonte@cbp.dhs.gov). In the subject line of your email, please use, “Comment on Expansion of Automated Entry Type 52 for ACE Cargo Release.”

**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](mailto:steven.j.zaccaro@cbp.dhs.gov) with the subject heading “Automated Entry Type 52 for ACE Cargo Release-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, Pub. L. 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 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 XVI, entitled, "Development of ACE Prototypes." The procedures and criteria applicable to participation in the ACE Cargo Release test and prior ACE tests remain in effect except as explicitly changed by this notice or subsequent notices published in the **Federal Register**.

## **II. Authorization for Modification of the ACE Cargo Release 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 Cargo Release 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. ACE Cargo Release Test**

On November 9, 2011, CBP published in the **Federal Register** (76 FR 69755) a notice announcing an NCAP test concerning ACE Simplified Entry to simplify the entry process for type "01" (consumption) and type "11" (informal) commercial entries by reducing the number of data elements required to obtain release for cargo imported by

air. In a general notice titled “Modification of National Customs Automation Program Test Concerning Automated Commercial Environment (ACE) Cargo Release,” published in the **Federal Register** (78 FR 66039) on November 4, 2013, CBP modified the ACE Simplified Entry Test and renamed it the ACE Cargo Release Test. The ACE Cargo Release Test provided additional capabilities to test participants and expanded eligibility by eliminating the Customs-Trade Partnership Against Terrorism (C-TPAT) status requirement for importer self-filers and customs brokers. On February 3, 2014, CBP published a notice in the **Federal Register** (79 FR 6210) announcing modification of the ACE Cargo Release Test to include the ocean and rail modes of transportation. CBP further modified the ACE Cargo Release Test in a notice published in the **Federal Register** on May 2, 2014 (79 FR 25142) to expand the enhanced functionality under the test to include cargo imported by truck. On February 10, 2015, CBP published a notice in the **Federal Register** (80 FR 7487) to modify the name of one data element (i.e., consignee number) and allow authorized importer and customs brokers to submit the ACE Cargo Release entry and Importer Security Filing (ISF) in a combined transmission to CBP. On March 27, 2015, CBP published a notice in the **Federal Register** (80 FR 16414) modifying the ACE Cargo Release Test to include type 03 entries (for merchandise subject to antidumping or countervailing duties) for all modes of transportation and to file, for cargo transported in the truck mode, entries for split shipments or partial shipments, and entry on cargo that has been moved in-bond from the U.S. port of unloading.

#### **IV. Modifications of ACE Cargo Release Test**

This notice announces that CBP will modify the ACE Cargo Release 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, a simplified entry for the release of cargo for entry type 52 (i.e., Government – Dutiable (other than the Defense Contract Management Command (DCMAO))), in addition to filing a simplified entry for the release of cargo for entry types 01, 03, and 11.

#### **V. Eligibility Requirements**

To be eligible to apply for this test, the applicant must: (1) be a self-filing importer or broker who has the ability to file ACE Cargo Release, the corresponding entry summary in ACE, and to file ACE Entry Summary certified for cargo release; or (2) have shown the intent to file ACE Cargo Release, the corresponding entry summary in ACE, and to file ACE Entry Summary certified for cargo release.

Parties seeking to participate in this test must use a software package that has completed Automated Broker Interface (ABI) certification testing for ACE and offers the ACE Cargo Release (SE) message set prior to transmitting data under the test. For a complete discussion on procedures for obtaining an ACE Portal Account, please see the General Notice, 73 FR 50337 (August 26, 2008). Any importers not self-filing must ensure its broker has the capability to file entry summaries in ACE.

## **VI. Test Participation Selection Criteria**

The ACE Cargo Release test is open to all importers and customs brokers filing ACE Entry Summaries for cargo transported by air, ocean, rail, and truck modes of transportation, as well as by mail, pedestrian, and passenger (hand-carried) modes of transportation. If the volume of eligible applicants exceeds CBP's administrative capabilities, CBP will reserve the right to select importer and exporter participants based upon entry filing volume, diversity of clients or of industries represented, while giving consideration to the order in which CBP received the requests to participate.

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 Cargo Release transaction data. ACE Cargo Release data may be submitted at all ports of entry for entry type 52 as of [INSERT 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER], 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.

## **VII. Filing Capabilities and Requirements**

The filing capabilities and functionalities for the ACE Cargo Release tests that are set forth in the above-mentioned **Federal Register** notices (i.e., 76 FR 69755, 78 FR 66039, 79 FR 6210, 79 FR 25142, 80 FR 7487, and 80 FR 16414) continue to apply and are now expanded to include ACE-participating importers and customs brokers filing type 52 entries, to allow automated filing and processing for cargo conveyed by any mode of transportation, including by the air, ocean, rail, and truck modes of

transportation. The ACE Cargo Release filing capabilities serve to assist the importer in completion of entry as required by the provisions of 19 U.S.C. 1484(a)(1)(B).

Participants in this test who file ACE Cargo Release data must also file the corresponding entry summary in ACE. Alternatively, test participants may file an ACE Entry Summary certified for release in lieu of an ACE Cargo Release.

### **VIII. Functionality**

Upon receipt of the ACE Cargo Release data, CBP will process the submission and will subsequently transmit its cargo release decision to the importer or entry filer. If a subsequent submission is submitted to CBP, CBP's decision regarding the original submission will no longer be controlling. The merchandise will then be considered to be entered upon its arrival in the port of entry with the intent to unlade, as provided by current 19 CFR 141.68(e).

### **IX. Test Duration**

This modified ACE Cargo Release test will begin on or about [INSERT 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This test will conclude by way of a document published in the **Federal Register**.

### **X. 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.

## **XI. 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 18, 141, 142, and 143 thereof relating to entry 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”).

## **XII. 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.

## **XIII. Paperwork Reduction Act**

The collection of information for the ACE Cargo Release Test and ISF have 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). The OMB information collection number for the ACE Cargo Release Test is 1651–0024 and the OMB information collection number for ISF is 1651-0001. 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.

#### **XIV. 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.

#### **XV. 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](mailto: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](mailto: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.

## **XVI. 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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