



9111-14

DEPARTMENT OF HOMELAND SECURITY

Customs And Border Protection

Modification of the National Customs Automation Program Test Regarding Submission of Import Data and Documents Required by U.S. Fish and Wildlife Service through the Automated Commercial Environment

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

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP), in consultation with the U.S. Fish and Wildlife Service (FWS), is modifying and reopening the National Customs Automation Program (NCAP) test pertaining to the submission of certain import data and documents for commodities regulated by FWS (“FWS test”) through the Automated Commercial Environment (ACE). The modifications in this notice apply to the participation and discontinuation of participation in the test, submission options for test participants, and restrictions to the initial participation in the test. Except to the extent expressly announced or modified by this document, all aspects, rules, terms and conditions announced in a previous notice regarding the FWS test remain in effect.

DATES: As of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], the modifications to the FWS test will become operational. This test will continue until concluded by way of announcement in the *Federal Register*.

ADDRESSES: Comments concerning this notice and any aspect of this test may be submitted at any time during the test via email to Christopher Mabelitini, Trade Transformation Office, Office of Trade, U.S. Customs and Border Protection at (571) 468-5095 or

Christopher.Mabelitini@cbp.dhs.gov, with a subject line identifier reading “Comment on FWS Test FRN.”

FOR FURTHER INFORMATION CONTACT: For Partner Government Agency (PGA)-related questions, contact Bill Scopa, Trade Policy and Programs, Office of Trade, U.S. Customs and Border Protection at (202) 863-6554 or William.R.Scopa@cbp.dhs.gov. For technical questions related to 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, Trade Transformation Office, Office of Trade, U.S. Customs and Border Protection at (571) 358-7809 or Steven.J.Zaccaro@cbp.dhs.gov with the subject heading “FWS Test.” For FWS-related questions, contact Tamesha Woulard, Office of Law Enforcement, U.S. Fish and Wildlife Service at (703) 358-1949 or Tamesha_Woulard@fws.gov.

SUPPLEMENTARY INFORMATION:

I. Background

National Customs Automation Program Test

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization in the North American Free Trade Agreement (NAFTA) Implementation Act (Customs Modernization Act) (Pub. L. 103-182, 107 Stat. 2057, 2170, December 8, 1993) (19 U.S.C. 1411). Through NCAP, the 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) as the electronic data interchange (EDI) system authorized by U.S. Customs and Border Protection (CBP). ACE is an automated and electronic system for commercial trade processing 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 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 and add new functionality. Section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) provides for the testing of NCAP components. *See* T.D. 95-21, 60 FR 14211 (March 16, 1995).

The U.S. Fish and Wildlife Service (FWS) Partner Government Message Set (PGA) and Digital Image System (DIS) Test

On May 5, 2016, CBP published a notice in the *Federal Register* (81 FR 27149) announcing an NCAP test concerning the electronic submission of certain import data and documents for commodities regulated by FWS ("FWS test"). The test notice provided that test participants would electronically submit data contained in FWS's "Declaration for Importation or Exportation of Fish and Wildlife" ("Declaration" or "FWS Form 3-177") to ACE using the Partner Government Agency (PGA) Message Set, and any required original permits or certificates, and copies of any other documents required under the FWS regulations (*see* 50 CFR part 14) to ACE via the Document Image System (DIS). Under the test, ACE replaced FWS's Internet-based filing system ("eDecs") used for the electronic submission of the Declaration and accompanying documents. After receipt in ACE, the data and electronic documents would be sent to FWS for processing. The test notice further stated that original "Convention on International Trade in Endangered Species of Wild Fauna and Flora" ("CITES") permits and certificates, and foreign-law paper documents would continue to be submitted directly to the

FWS office at the applicable port. There was a lack of participation, and on January 12, 2017, the FWS PGA Message Set test was suspended due to concerns raised by the industry regarding the design of the message set. *See* CSMS Message Set 17-000015.

II. Test Modifications

This document announces the reopening of the FWS test with modifications. Each modification is discussed separately below. Except to the extent expressly announced or modified by this document, all aspects, rules, terms, requirements, obligations and conditions announced in the previous notice regarding the FWS test remain in effect.

A. Application for Participation in Test

The original test notice announced that a party seeking to participate in the test program had to send an email to its CBP client representative, Trade Transformation Office, Office of Trade (formerly known as ACE Business Office, Office of International Trade). This notice announces that applications to participate in the test program should be submitted by email to FWS at lawenforcement@fws.gov, with the subject heading “Request to Participate in the FWS Test.” A copy of the application should be sent to the applicant’s CBP client representative, Trade Transformation Office, Office of Trade. Applications must include the applicant’s filer code, the commodities the applicant intends to import, and the intended ports of arrival. Any applicant to the original test notice who wishes to participate in the reopening of the test should apply again pursuant to this notice.

B. Discontinuation of Participation in Test

The original notice was silent as to the discontinuation of participation in the test program. This notice announces that requests to discontinue participation in the test program should be submitted by email to FWS at lawenforcement@fws.gov, with the subject heading “Request to Discontinue Participation in the FWS Test.” This process ensures that any future entries submitted by an importer who wishes to discontinue participation will not be rejected by the business rules operating in the test due to missing Declaration data and accompanying documents. A copy of the request to discontinue should be sent to the participant’s CBP client representative, Trade Transformation Office, Office of Trade. The request should include the date the participant wishes to end the participation.

C. Submission of Data and Documents in ACE

Under the original test program, test participants were required to submit the Declaration data electronically to ACE when filing an entry, using the PGA Message Set, and the participants had to refrain from filing the Declaration data and accompanying documents in eDecs. This notice announces that CBP established a design that provides participants with different filing options when submitting data, disclaimers or documents in ACE. Participants do not need to notify CBP or FWS about which option they plan on using. Participants may use different filing options for different entries.

- (1) **Option 1:** Test participants will file FWS Form 3-177 data in ACE using the PGA Message Set and upload required FWS documents in DIS. This filing option replaces eDecs for those participants filing entries under the auspices of this test program. ACE will send the data and electronic documents to FWS for processing.

- (2) **Option 2:** Test participants will file FWS Form 3-177 and required documents directly with FWS. Under this option, test participants will either file the applicable eDecs confirmation number in the PGA Message Set (if FWS clearance was already received via eDecs) or use Disclaimer code “D” (“data filed through paper”) to file in the PGA Message Set (if FWS clearance was already received via paper). DIS will not be used under this option unless further information is requested by CBP or FWS to substantiate a disclaimer on a case-by-case basis.
- (3) **Option 3:** Test participants will file in the PGA Message Set using Disclaimer code “C” (“data filed through other agency means”) to indicate that they will follow up with FWS and file in eDecs at a later time. DIS will not be used under this option unless further information is requested by CBP or FWS to substantiate a disclaimer on a case-by-case basis.
- (4) **Option 4:** When a Harmonized Tariff code is flagged as “FW1”, participants will file in the PGA Message Set using Disclaimer code “E” (“product does not contain fish or wildlife, including live, dead, parts or products thereof, except as specifically exempted from declaration requirements under 50 CFR Part 14”) to disclaim the need to file FWS Form 3-177 and required documents because the commodity does not contain fish or wildlife. However, if a commodity contains both FWS regulated and non-FWS regulated animal components, Disclaimer code “E” should be used in conjunction with one of the above options.

D. Restrictions to Initial Participation in Test

This test notice announces two restrictions to the initial participation in this reopened test program. Initially, participation will be restricted to certain FWS ports. FWS will notify participants of the ports they may use to enter commodities under the test procedures. In addition, initial participation in the test program will exclude entries of live and perishable commodities. Once FWS determines that a participant has fully tested its software for filing entries in ACE, FWS will notify the participant of its eligibility to file for entries of live and perishable commodities.

III. Waiver of Regulation Under the Test

For purposes of this test, those provisions of 19 CFR parts 10 and 12 that are inconsistent with the terms of this test are waived for the test participants only. *See* 19 CFR 101.9(b). This document does not waive any recordkeeping requirements found in 19 CFR part 163 and the Appendix to part 163 (commonly known as the “(a)(1)(A) list”). This test also does not waive any FWS requirements under 50 CFR part 14.

IV. Test Participation and Selection Criteria

To be eligible to apply for this test, the applicant must:

- (1) Be a self-filing importer who has the ability to file ACE entry/cargo release and ACE Entry Summaries certified for cargo release or a broker who has the ability to file ACE entry/cargo release and ACE Entry Summaries certified for cargo release;
- (2) File Declarations and disclaimers for FWS-regulated commodities; and
- (3) Have an FWS eDecs filer account that contains the CBP filer code when filing under Option 1.

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

V. Application Process

As of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], FWS will accept applications throughout the duration of the test. FWS will notify the selected applicants by an email message of their selection and the starting date of their participation. Selected participants may have different starting dates. Anyone providing incomplete information, or otherwise not meeting participation requirements, will be notified by an email message and given the opportunity to resubmit the application. There is no limit on the number of participants.

VI. Test Duration

The modifications announced in this test will become operational on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. At the conclusion of the test pilot, an evaluation will be conducted to assess the effect that the PGA Message Set has on expediting the submission of FWS importation-related data elements and the processing of FWS-related entries. The final results of the evaluation will be published in the *Federal Register* as required by §101.9(b)(2) of the CBP regulations (19 CFR 101.9(b)(2)). Any modifications to this test will be announced via a separate *Federal Register* notice.

VII. Paperwork Reduction Act

The collection of information contained in this FWS PGA Message Set 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 1018-0012. 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.

Dated: April 17, 2018.

Brenda B. Smith,
Executive Assistant Commissioner,
Office of Trade.

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