

# U.S. Customs and Border Protection

## *General Notices*

### DEPARTMENT OF HOMELAND SECURITY

#### **National Customs Automation Program Test Concerning Automated Commercial Environment (ACE) Entry Summary, Accounts and Revenue**

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

**ACTION:** General notice.

**SUMMARY:** This document announces Customs and Border Protection's (CBP's) plan to conduct a National Customs Automation Program (NCAP) test concerning Automated Commercial Environment (ACE) Entry Summary, Accounts and Revenue (ESAR) capabilities. These new capabilities will include functionality specific to the filing and processing of formal consumption entries and informal entries. This entry summary processing will include Automated Broker Interface (ABI) Census Warning Overrides and issuance of certain CBP forms through the ACE Portal. Other new functionality will enhance Portal Account Management and allow for ACE Secure Data Portal reporting. In addition to announcing new functionality, this notice invites public comment concerning any aspect of the planned test, describes the eligibility, procedural, and documentation requirements for voluntary participation in the test, and outlines the development and evaluation methodology to be used in the test. This notice will be referred to as the **ESAR II** Notice.

**DATES:** Comments on this notice and interest in participation in this planned test are requested by October 24, 2008.

**ADDRESSES:** Comments concerning this notice and indication of interest in participation in ESAR II should be submitted via e-mail to Janet Pence at [ESARinfoinbox@dhs.gov](mailto:ESARinfoinbox@dhs.gov). Please indicate "ESAR II Federal Register Notice" in the subject line of your email.

**FOR FURTHER INFORMATION CONTACT:** For policy-related questions, please contact Cynthia Whittenburg at [cynthia.whittenburg@dhs.gov](mailto:cynthia.whittenburg@dhs.gov). For technical questions that are non-ABI related,

please contact Valarie Neuhart at (703) 650-3370. For technical questions related to ABI transmissions, please contact your assigned client representative. Interested parties without an assigned client representative should direct their questions to the Client Representative Branch at (703) 650-3500.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

###### I. ACE Test Programs

###### A. ACE Portal Accounts

On May 1, 2002, the former U.S. Customs Service, now U.S. Customs and Border Protection (CBP), published a General Notice in the **Federal Register** (67 FR 21800) announcing a plan to conduct a National Customs Automation Program (NCAP) test of the first phase of the Automated Commercial Environment (ACE). The test was described as the first step toward the full electronic processing of commercial importations with a focus on defining and establishing an importer's account structure. The notice announced that importers and authorized parties would be allowed to access their customs data via a web-based Account Portal. The notice set forth eligibility criteria for companies interested in establishing Account Portals accessible through ACE.

Subsequent General Notices revised the eligibility criteria (see General Notice published in the **Federal Register** on February 1, 2005 (67 FR 5199)) and expanded the universe of eligible participants in the ACE test and the types of ACE Portal Accounts. On February 4, 2004, CBP published two General Notices in the **Federal Register**, establishing ACE Truck Carrier Accounts and opening the application period for authorized importers and their designated brokers to participate in the NCAP test implementing the Periodic Monthly Statement (PMS) process (see 69 FR 5360 and 69 FR 5362, respectively). Brokers were invited to establish Broker Accounts in ACE in order to participate in the NCAP test to implement PMS. In both of the February 4, 2004 General Notices, CBP advised participants that they could designate only one person as the Account Owner for the company's ACE Portal Account. The Account Owner was identified as the party responsible for safeguarding the company's ACE Portal Account information, controlling all disclosures of that information to authorized persons, authorizing user access to the ACE Portal Account information, and ensuring the strict control of access by authorized persons to the ACE Portal information.

On September 8, 2004, CBP published a General Notice in the **Federal Register** (69 FR 54302) inviting customs brokers to participate in the ACE Portal test generally and informing interested parties that once they had been notified by CBP that their request to participate in the ACE Portal test had been accepted, they would be

asked to sign and submit a Terms and Conditions document. CBP subsequently contacted those participants and asked them to also sign and submit an ACE Power of Attorney form and an Additional Account/Account Owner Information form.

#### B. Terms and Conditions for Access to the ACE Portal

On May 16, 2007, CBP published a General Notice in the **Federal Register** (72 FR 27632) announcing a revision of the terms and conditions that must be followed as a condition for access to the ACE Portal. These terms and conditions superseded and replaced the Terms and Conditions document previously signed and submitted to CBP by ACE Portal Trade Account Owners. The notice specified that no further action would be required by ACE Portal Trade Account Owners for those ACE Portal Accounts already established with CBP with the proper Account Owner listed. The principal changes to the ACE Terms and Conditions included a revised definition of "Account Owner" to permit either an individual or a legal entity to serve in this capacity, new requirements relating to providing notice to CBP when there has been a material change in the status of the Account and/or Trade Account Owner, and explanatory provisions as to how the information from a particular account may be accessed through the ACE Portal when that account is transferred to a new owner.

On July 7, 2008, CBP published a General Notice in the **Federal Register** (73 FR 38464) which revised the terms and conditions set forth in the May 16, 2007, notice regarding the period of Portal inactivity which will result in termination of access to the ACE Portal. The July 7, 2008, notice provided that if forty-five (45) consecutive days elapse without an Account Owner, Proxy Account Owner, or an Account user accessing the ACE Portal, access to the Portal will be terminated. The time period for allowable Portal inactivity previously was ninety (90) days.

#### C. ACE Non-Portal Accounts

CBP has also permitted certain parties to participate in specified ACE tests without establishing ACE Portal Accounts ("Non-Portal Accounts"). On October 24, 2005, CBP published a General Notice in the **Federal Register** (70 FR 61466) announcing that importers could establish ACE Non-Portal Accounts and participate in the PMS test under certain conditions. On March 29, 2006, CBP published another General Notice in the **Federal Register** (71 FR 15756) announcing that truck carriers that do not have ACE Truck Carrier Accounts may use third parties to transmit truck manifest information on their behalf electronically in the ACE Truck Manifest system via Electronic Data Interface (EDI) messaging.

#### D. New ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities

On October 18, 2007, CBP published a General Notice in the **Federal Register** (see 72 FR 59105) announcing CBP's plan to conduct

a new test concerning ACE Entry Summary, Accounts and Revenue (ESAR) capabilities, providing enhanced account management functions for ACE Portal Accounts and expanding the universe of ACE account types. This General 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). See ACE Systems of Record Notice, published in the **Federal Register** on January 19, 2006 (71 FR 3109). This means that the creation and maintenance of specified master data elements will originate in ACE and will be distributed to other CBP systems such as the Automated Commercial System (ACS).

In addition to announcing that importer Portal Accounts are capable of creating and maintaining specified importer data via the ACE Portal, the notice stated that filers have the ability to create a new CBP Form 5106 (Importer ID Input Record) via the ACE Portal or the Automated Broker Interface (ABI), and view applicable Participating Government Agency (PGA) licenses, permits and certificates via the ACE Portal. Through this notice, Broker Portal Accounts were provided the capability through the ACE Portal of maintaining organizational demographic data (e.g., addresses, points of contact, etc.), license and permit qualifiers, data on managing officials, employee lists, information on relationships to individual licensed brokers, points of contact and address information (at filer code level for each local broker permit and each port covered by the local permit, and for the national broker permit). Truck Carrier Portal Accounts were provided the capability through the ACE Portal to view any applicable PGA licenses, permits and certificates, and to maintain through the ACE Portal addresses and points of contact and pre-registered truck conveyance information, including equipment, shipper, and consignee data. Truck Carrier Portal Accounts were also provided with the ability to create and maintain driver accounts and search for and correlate existing driver accounts to their Carrier Account. Finally, the notice also announced the expansion of Portal Account Types to now include: carriers (all modes: air, rail, sea); cartman; lighterman; driver/crew; facility operator; filer; foreign trade zone (FTZ) operator; service provider; and surety.

## II. Test Concerning New ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities

### A. In General

This document announces CBP's plan to conduct a new test concerning ACE Entry Summary, Accounts and Revenue (ESAR II) capabilities that will provide new Portal and EDI capabilities specific to Entry Summary filing and processing of consumption and infor-

mal entries. Functionality will include ABI Census Warning Overrides and issuance of CBP requests for information and notices of action through the ACE Portal. New functionality will enhance Portal Account Management and allow for ACE Secure Data Portal reporting.

Initially, this release of ESAR II will be limited only to formal entries, commonly referred to in the Automated Commercial System (ACS) as type 01 entries, and informal entries, commonly referred to in ACS as type 11 entries. Functionality for other entry types will be implemented as it becomes available and will be announced via subsequent publication in the **Federal Register**. Interested ABI participants wishing to submit type 01 and 11 entries for this test are asked to provide CBP with the number of expected ACE entry summaries that will be submitted to the ports listed in this notice within 60 days of publication of this notice ([see Part IV below](#)).

## B. Portal Capability

### 1. Forms and Documents

CBP Forms 28, 29, and 4647 issued for ACE entry summaries will be posted to a participating importer's ACE Portal Account. Participating importer and broker ACE Portal Accounts may select a preferred method of communication with CBP with regard to the receipt of CBP Form 28, Request for Information, CBP Form 29, Notice of Action Taken, and CBP Form 4647, Notice to Mark and/or Notices to Redeliver, that are issued for ACE entry summaries. Communication may be done electronically through the Portal or by paper or via both methods. Additionally, an importer Portal Account whose entry summaries will be filed by an ACE test participant may respond to CBP forms through the ACE Secure Data Portal by interactively completing the form and uploading additional supporting documentation or images, as needed. Importers and/or participating test filers should also note that forms may be saved in draft form prior to submission to CBP. However, once sent, the document cannot be changed. A print option will also be available for those participants choosing to print the form and then mail it to CBP.

### 2. Declarations

Participating importer, broker, and carrier Portal Account types will be able to maintain certain declarations in the ACE Secure Data Portal. Those declarations may be communicated to CBP through that Portal. The system will not yet allow submission of these declarations for particular entry summaries, but will allow communication in response to CBP requests. Declarations that will be supported via the Portal include the following: affidavits of manufacturers; North American Free Trade Agreement (NAFTA) Certificates of Origin; Non-Reimbursement Blanket Statements (Anti-Dumping/Countervailing Duty (AD/CVD)); certain marking rulings; and importer certifying statements.

### 3. Reports

ACE Secure Data Portal Reports will be enhanced to include ACE Entry Summary Data.

### C. EDI Capability

#### 1. Entry Summary

Approved trade participants may begin to file entry summaries electronically in ACE for entry types 01 and 11 using a better organized, more descriptive ACE ABI CATAIR (Customs and Trade Automated Interface Requirements) document. CATAIR documentation provides complete information describing how importers and/or their agents provide electronic import information to ABI, and receive transmissions from ABI once they have become a participant.

#### 2. Cargo Release

Filers may also initiate cargo release from a certified entry summary filed in ACE.

#### 3. Census Warnings

Census warnings may be electronically overridden for ACE entry summaries prior to or after receiving a Census warning message through ABI. There will also be an ACE Census Warning ABI Query for unresolved warnings. Interested parties should go to CBP.gov for more detailed information regarding these new ACE ABI CATAIR formats.

#### 4. Automated Invoice Interface (AII) and Reconciliation

ACE entry summaries may be flagged for AII and reconciliation.

#### 5. ABI Status Messages

The ACE Entry Summary Status Notification message will contain the following status information regarding an action CBP has manually executed for an ACE entry summary:

- Request for Electronic Invoice Data
- Entry Summary Documentation
- Entry Summary Reject
- Entry Summary Inactivated
- Entry Summary Canceled

Interested parties should go to CBP.gov for more detailed information regarding these new ACE ABI CATAIR formats.

The ABI Status message will contain an Action Identification Number that is a unique number assigned by ACE to identify the specific action or request to correlate trade responses to the initial CBP request.

#### 6. Reporting of the Ultimate Consignee Number

The ultimate consignee number must be reported for each entry summary line. When the importer of record and the ultimate consignee number are the same, the number must appear on each line; the word "SAME" may not be used.

### III. Eligibility Requirements

Importer and broker volunteers wishing to benefit from Portal functionality available in this test must have an ACE Portal Account (see notices referenced above relating to the establishment of ACE Portal Accounts). Volunteers may also participate as Non-Portal Accounts, but they will not be able to avail themselves of all functionality offered. ABI volunteers wishing to participate in this test must:

- File entries on a Statement, i.e., no non-statement, single pay entry summaries will be allowed.
- Use a software package that has completed ABI certification testing for ACE (NOTE: software providers need not reply to this Notice but should contact their client representative if they are interested in ABI certification testing for ACE).

All data submitted and entered into the ACE Portal 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 (see 19 U.S.C. 1431(c)).

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 request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

If necessary, CBP will reserve the right to limit the number of participants and locations during the initial stages of the test.

### IV. Implementation of the Test

This test of ESAR II capabilities will be conducted in a phased approach, with initial deployment scheduled for no earlier than January 23, 2009. In order to properly conduct this test, CBP invites interested trade ABI volunteers to provide comments to CBP with regard to the number of expected ACE entry summaries that will be submitted to each of the ports listed below. Interested ABI trade volunteers are to provide their comments to CBP within 60 days of publication of this notice. Based on comments received in response to this notice, CBP will publish a subsequent **Federal Register** notice setting forth the deployment schedule at dates to be announced for specified ports.

ABI trade volunteers interested in submitting type 01 and 11 entries for this test are asked to provide CBP with the number of expected ACE entry summaries that will be submitted to each of the locations listed below:

- Miami, Florida
- New Orleans, Louisiana
- Houston, Texas
- Long Beach, California
- Laredo, Texas
- San Francisco, California

- Seattle, Washington
- Chicago, Illinois
- El Paso, Texas
- Boston, Massachusetts
- San Diego, California
- Newark, New Jersey
- J.F.K. Airport, New York
- Baltimore, Maryland
- Philadelphia, Pennsylvania
- Cleveland, Ohio
- Tucson, Arizona
- Tampa, Florida
- Buffalo, New York
- Detroit, Michigan
- Atlanta, Georgia

#### V. Waiver of Affected Regulations

Any provision in the CBP Regulations (title 19, Code of Federal Regulations), including but not limited to provisions found in parts 141, 142, 143 and 151, relating to entry/entry summary processing, invoicing, examination and redelivery of merchandise, that are inconsistent with the requirements set forth in this ESAR II Notice are waived for the duration of the test.

#### VI. Misconduct Under the Test

An ACE test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, and/or suspension from this test for any of the following:

- Failure to follow the terms and conditions of this test.
- Failure to exercise reasonable care in the execution of participant obligations.
- Failure to abide by applicable laws and regulations.
- Failure to deposit duties or fees in a timely manner.
- Misuse of the ACE Portal.
- Engagement in any unauthorized disclosure or access to the ACE Portal.
- Engagement in any activity which interferes with the successful evaluation of the new technology.

Suspensions for misconduct will be administered by the Executive Director, Commercial Targeting and Enforcement, Office of International Trade, CBP Headquarters. A notice proposing suspension will be provided in writing to the participant. Such notice will apprise the participant of the facts or conduct warranting suspension and will inform the participant of the date that the suspension will begin.

Any decision proposing suspension of a participant may be appealed in writing to the Assistant Commissioner, Office of International Trade, within 15 calendar days of the notification date. Should the participant appeal the notice of proposed suspension, the participant must address the facts or conduct charges contained in the notice and state how compliance will be achieved. In cases of non-payment, late payment, willful misconduct or where public health interests or safety is concerned, the suspension may be effective immediately.

#### VII. Test Evaluation Criteria

To ensure adequate feedback, participants are required to participate in an evaluation of this test. CBP also invites all interested parties to comment on the design, implementation and conduct of the test at any time during the test period. CBP will publish the final results in the **Federal Register** and the **Customs Bulletin** as required by 19 CFR 101.9(b).

The following evaluation methods and criteria have been suggested:

1. Baseline measurements to be established through data analysis.
2. Questionnaires from both trade participants and CBP addressing such issues as:
  - Workload impact (workload shifts/volume, cycle times, etc.).
  - Cost savings (staff, interest, reduction in mailing costs, etc.).
  - Policy and procedure accommodation.
  - Trade compliance impact.
  - Problem resolution.
  - System efficiency.
  - Operational efficiency.
  - Other issues identified by the participant group.

Dated: August 19, 2008

DANIEL BALDWIN,  
*Assistant Commissioner,*  
*Office of International Trade.*

[Published in the Federal Register, August 26, 2008 (73 FR 50337)]

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### **U.S. Customs and Border Protection Trade Symposium 2008: “Global Trade: Continuity Through Transition”**

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

**ACTION:** Notice of Trade Symposium.

**SUMMARY:** This document announces that U.S. Customs and Border Protection (CBP) will convene its annual trade symposium, featuring panel discussions involving department personnel, members of the trade community and other government agencies, on the agency's role in international trade initiatives and programs. Members of the international trade and transportation communities and other interested parties are encouraged to attend.

**DATES:** Wednesday, October 29, 2008 (opening remarks and panel discussions beginning at 1:00 p.m. and open forum with senior management (6:00 p.m. – 8:00 p.m.)). Thursday, October 30, 2008 (panel discussions – 8:00 a.m. – 5:00 p.m.). Friday, October 31, 2008 (panel discussions ending by 1:00 p.m.).

**ADDRESS:** The CBP Trade Symposium will be held at the JW Marriott, 1331 Pennsylvania Avenue, NW, Washington, DC. Upon entry into the building, take elevators downstairs to the ballroom level.

**FOR FURTHER INFORMATION CONTACT:** The Office of International Affairs and Trade Relations at (202) 344-1440, or at [traderelations@dhs.gov](mailto:traderelations@dhs.gov). To obtain the latest information on the Symposium and to register on-line, visit the CBP web site at <http://www.cbp.gov>. Requests for special needs should be sent to the Office of International Affairs and Trade Relations at [traderelations@dhs.gov](mailto:traderelations@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The agenda for the Trade Symposium and the keynote speaker will be announced at a later date on the CBP website. The cost is \$250.00 per person, and includes all Symposium activities. Interested parties are requested to register early, as space is limited. Registration will open to the public on or about September 2, 2008. All registrations must be made on-line at the CBP web site (<http://www.cbp.gov>) and will be confirmed with payment by credit card only.

Consideration will be given, in a first come, first served order, based on space availability. Due to the overwhelming interest to attend the Symposium, each company is requested to limit their company's registrations to three participants, in order to afford equal representation from all members of the international trade community. If a company exceeds the limitation, any additional names submitted for registration will automatically be placed on the waiting list.

Hotel accommodations have been reserved at two hotels in downtown Washington, DC. The JW Marriott Hotel, 1331 Pennsylvania Avenue, NW, Washington DC, has reserved a block of rooms for Wednesday through Friday, October 29 – 31, 2008, at the rate of U.S. \$319.00 per night. Reservations must be made directly with the hotel by September 29<sup>th</sup> at 1-800-393-2503 or 202-393-2000, referencing "CBP Trade Symposium," or on-line at <http://www.marriott.com/hotels/travel/wasjw?groupCode=USGUSGA&app=resvlink&>

fromDate=10/29/08&toDate=11/1/08. The Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW, Washington, DC has reserved a block of rooms for Wednesday through Friday, October 29 – 31, 2008, at the rate of U.S. \$201.00 per night. Reservations must be made directly with the hotel by September 30, 2008 at 1-800-421-1442, referencing “CBP Trade Symposium,” or on-line at [https://resweb.passkey.com/Resweb.do?mode=welcome\\_ei\\_new&eventID=70111&fromResdesk=true](https://resweb.passkey.com/Resweb.do?mode=welcome_ei_new&eventID=70111&fromResdesk=true).

Date:

MICHAEL C. MULLEN,  
*Assistant Commissioner,  
Office of International Affairs and Trade Relations,  
U.S. Customs and Border Protection.*

[Published in the Federal Register, August 26, 2008 (73 FR 50341)]

