



9111-14

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications

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

**ACTION:** General notice.

**SUMMARY:** This notice announces modifications and clarifications pertaining to U.S. Customs and Border Protection's (CBP's) Entry Summary, Accounts and Revenue (ESAR IV) test program concerning the processing of post-summary corrections (PSCs) to entry summaries that are filed in the Automated Commercial Environment (ACE). The modifications to the ESAR IV test program will allow filers greater access to data filed in ACE as it relates to the original entry and any subsequent PSC, limit certain additional data elements from being changed via PSC, and preclude a PSC on any entry that has been protested or where merchandise covered by the original entry has been conditionally released and its right to admission has not been determined. This notice also clarifies bond obligations when a PSC has been filed, CBP's authority to reject a PSC, and the meaning of certain terms as they relate to the ESAR IV test.

**DATES:** The ESAR IV test modifications will go into effect [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], and will continue until concluded by way of announcement in the **Federal Register**. Comments concerning this notice and any aspect of the test may be submitted at any time during the test period to the address set forth below.

**ADDRESS:** Comments concerning this notice should be submitted via e-mail to Monica Crockett at [ESARinfoinbox@dhs.gov](mailto:ESARinfoinbox@dhs.gov). Please indicate “ESAR IV (Post-Summary Corrections Processing)” in the subject line of your email.

**FOR FURTHER INFORMATION CONTACT:** For policy-related questions, contact Virginia McPherson via email at [otentrysummary@cbp.dhs.gov](mailto:otentrysummary@cbp.dhs.gov). For technical questions related to ABI transmissions, 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. Automated Commercial Environment (ACE) Test Programs**

Automated Commercial Environment (ACE) prototypes are tested in accordance with § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)), which provides for the testing of National Customs Automation Program (NCAP) components. A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below in section V of this document. The procedures and criteria related to participation in the prior ACE tests remain in effect unless otherwise explicitly changed by this or subsequent notices published in the **Federal Register**.

**II. ACE Entry Summary, Accounts and Revenue (ESAR IV) Test Program**

In a notice published in the **Federal Register** (76 FR 37136) on June 24, 2011, U.S. Customs and Border Protection (CBP) announced a plan to conduct a NCAP test concerning new ACE ESAR IV capabilities (“ESAR IV test”). The ESAR IV test permitted importers to file post-

summary corrections (PSCs) of certain ACE entry summaries using the Automated Broker Interface (ABI). Importers and their brokers were also allowed to use ABI to file PSCs to those pre-liquidation ACE entry summaries that were accepted by CBP, fully paid, and under CBP control.

### **III. Modifications to the ESAR IV Test**

#### **A. Access by Filers to Entry and PSC Data**

Under the terms of the original ESAR IV test, as set forth in Subsection II.H of that document (76 FR 37138), the full content of the original entry summary was to be provided only to the filer of that entry summary. A subsequently filed PSC was deemed to fully replace the original entry summary, and full information with respect to the PSC was only available to the filer of the PSC and the filer of the original entry summary did not have access to the new filing. Similarly, if a second PSC was filed, it fully replaced the previously filed PSC and full information was accessible only to the filer of the second PSC. The filer of the original entry summary or the filer of the previously filed PSC were notified that a new replacement entry summary had been filed by a PSC, but did not have access to the new filing.

CBP received considerable feedback from the trade community and test participants regarding the opportunity for increased access to information in PSCs. In response to the test participants' requests for greater access, and after due consideration, CBP has determined it will modify the ESAR IV test to allow the original entry summary filer, and any subsequent PSC filer, full access to all entry summary data contained in a subsequent PSC. Therefore, by running a report or query in ACE, any filer can see the complete entry summary data as modified by a PSC.

Under the terms and conditions of the modification announced in this notice, when a PSC is filed, the filer of the original entry summary will be notified that the entry summary has been fully replaced by a PSC and the original filer will have full access to the new filing. Similarly, if a

subsequent PSC is filed, it fully replaces the previously filed PSC, and the filer of the first PSC will be notified that a new replacement entry summary has been filed and will have full access to the new filing. All of the information in the latest version of the entry summary and all subsequent PSCs will be accessible to all of the filers.

By participating under the terms and conditions of this test, importers and filers acknowledge that by filing a PSC they are making any commercial and confidential business information contained within the PSC available to all the parties described in this test, i.e. the filer of the original entry summary and any filers of a PSC correcting that entry summary. An importer should not file a PSC under the terms and conditions of this test if the importer does not want the original entry summary filer or PSC filer to have full access to all information contained within a subsequent PSC that was filed by a different filer.

It is noted that the recordkeeping obligations set forth in 76 FR 37138 remain unchanged (i.e., entry filers and PSC filers only have recordkeeping responsibilities for their own submissions and do not incur recordkeeping obligations related to the submissions of others).

#### B. Data Elements that Cannot be Changed Via PSC

The ESAR IV test notice, in Subsection II.E of that document (76 FR 37138), listed data elements that cannot be changed via PSC. This notice announces the following three additional data elements that cannot be changed via PSC:

- Date of Entry
- Bond
- Surety Code

### C. Criteria and Rules for Filing a PSC

The ESAR IV test notice, in Subsection II.D of that document (76 FR 37137), listed criteria and rules for filing a PSC. This notice announces two new criteria and one modification to an existing criterion. The new criteria are as follows:

- A PSC cannot be made on entries that have been protested; and
- A PSC cannot be made when any merchandise covered by the original entry has been conditionally released and its right to admission has not been determined.

The modified criterion reflects that where a PSC results in a formal (type 01) entry being changed/corrected to indicate it is an Antidumping/Countervailing (type 03) entry, or if a PSC for a change/correction to a type 03 entry results in additional AD/CVD duties due, the importer of record must deposit the associated AD/CVD duties (or bond, if allowed) at the same time the PSC is filed and failure to file the deposit of the duties (or bond, if allowed) will result in rejection of the PSC and may result in liquidated damages. Such failure may also subject the importer to penalties under 19 U.S.C. 1592, or the broker to penalties under 19 U.S.C. 1641, as the facts and circumstances warrant. This is a change from the terms of the original ESAR IV test, where a failure to file the deposit of duties did not result in a rejection of the PSC.

## **IV. Clarifications to the ESAR IV Test Program**

### A. Bonding and PSC Filing.

The ESAR IV test program did not address the subject of bonds and bonding as affected by a PSC. To provide clarity in this area, and affirm that for purposes of the ESAR IV test program the same bond and surety remain on an entry for which a PSC is filed, this notice announces the following ESAR IV bonding guidelines:

- If, prior to a PSC filing, a bond is filed pursuant to 19 CFR 142.4(b), or 19 CFR 141.20 (as authorized by 19 U.S.C. 1485(d)), that bond will continue to be obligated for the entry. All obligations vesting under the original entry, prior to the filing of a PSC, remain vested and are not obviated by a subsequent PSC filing.
- If a PSC is filed and accepted by CBP, the bond obligated at the time of entry, as well as any subsequent replacement bonds or superseding bonds, remain obligated for the original entry and the entry summary against which the PSC was filed.
- New bond data will not be accepted through a PSC.

#### B. Rejection of a PSC

While not explicitly stated in the ESAR IV test notice published in the **Federal Register** (76 FR 37136) on June 24, 2011, this notice clarifies that CBP retains the authority to reject any PSC that may be found to be incomplete or not in compliance with the requirements described in that test. A PSC which has been rejected by the system back to the filer may be re-transmitted within two (2) business days of the rejection. If there is no timely re-transmission, CBP will set the previously accepted entry for immediate liquidation, unless the liquidation of such previously accepted entry has been suspended pursuant to statute or court order.

#### C. Deemed Liquidation

Pursuant to 19 U.S.C. 1504(a), consumption entries are “deemed liquidated” at a rate of duty, value, quantity and amount of duties asserted by the importer of record. For purposes of the ESAR IV test, CBP interprets the statutory phrase “deemed liquidation” to mean rate of duty, value, quantity and amount of duties asserted at the time of acceptance of the PSC.

#### D. Definitions

This notice announces the following definitions for purposes of the ESAR IV test program:

- Complete or Full Replacement. The term “complete or full replacement” means the replacement of all data elements in an original entry summary filed in ACE with new data elements found in a superseding PSC. A complete or full replacement does not mean that the replaced data is null and void. Any obligations that vested under the original entry or entry summary remain valid. Obligations that vest subsequent to the replacement are attributable to the PSC. For example, when an original entry summary is filed outside the 15-calendar day time period for filing entry and liquidated damages are incurred, the filing of a PSC on that entry summary is deemed to “replace” the entry summary but does not obviate the liquidated damages that were assessed properly against the original filing.

- Under U.S. Customs and Border Protection (CBP) Review. The term “under U.S. Customs and Border Protection (CBP) review” means the period of time when CBP is reviewing the data elements and supporting documents of either an original entry summary or PSC prior to CBP’s disposition of the original entry summary or PSC.

#### **V. 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); 70 FR 5199 (February 1, 2005); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004).
- 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).
- NCAP Test Concerning the Document Imaging System: 77 FR 20835 (April 6, 2012).
- Modification of NCAP Test Concerning ACE Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013)

Dated: November 14, 2013.

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