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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Reopening and 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 reopening and modifying 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). Two of the modifications in this notice apply to the streamlining of the submission of data and documents for test participants using certain filing options under the FWS test (specifically, filing options 2 and 4). The other modifications are administrative, specifically, updating contact information for CBP and FWS.

DATES: As of April 6, 2020, 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 Trade Policy and Programs, Office of Trade, U.S. Customs and Border Protection, at FWS.Test.Participation@cbp.dhs.gov, with a subject line identifier reading “Comment on FWS Test FRN.”

FOR FURTHER INFORMATION CONTACT: Lea-Ann Bigelow, Trade Policy and Programs, Office of Trade, U.S. Customs and Border Protection, at (202) 863-6089 or FWS.Test.Participation@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 Michael Cooney, Supervisory ACE Client Representative, Trade Transformation Office, Office of Trade, U.S. Customs and Border Protection, at FWS.Test.Participation@cbp.dhs.gov, with the subject heading “FWS Test Technical Questions.” For FWS-related questions, contact Rhyan Tompkins, Senior Wildlife Inspector, Office of Law Enforcement (Headquarters), U.S. Fish and Wildlife Service, at (703) 358-1750 or lawenforcement@fws.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. National Customs Automation Program Test

The National Customs Automation Program (NCAP) was established under the authority of 19 U.S.C. 1411, in part, to develop 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).

B. The U.S. Fish and Wildlife Service (FWS) Partner Government Agency (PGA) Message Set 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 U.S. Fish and Wildlife Service (FWS). This original 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 Digital Image System (DIS). For more information and the general rules, procedures, technical requirements and terms and conditions applicable to the PGA Message Set and the DIS, please see prior *Federal Register* notices at 78 FR 75931 (December 13, 2013) and 80 FR 62082 (October 15, 2015).

Under the original test, ACE replaced FWS's Internet-based filing system ("eDecs") that was used for the electronic submission of the Declaration and accompanying documents. After receipt in ACE, the data and electronic documents were to be sent to FWS for processing. The original test notice further provided that original "Convention on International Trade in Endangered Species of Wild Fauna and Flora" ("CITES") permits and certificates, and foreign-law paper documents were to be submitted directly to the FWS office at the applicable CBP port. On January 12, 2017, the PGA Message Set test for FWS was suspended due to concerns raised

by the industry regarding the design of the message set. *See* Cargo Systems Messaging Service (CSMS) Message 17-000015.¹ On January 18, 2017, CBP issued a subsequent CSMS message to advise the public that, as a result of the suspension of the PGA Message Set for FWS, the FWS pilot was suspended pending further review and stakeholder collaboration to enhance the implementation. *See* CSMS Message 17-000023.

On April 23, 2018, CBP published a notice in the *Federal Register* (83 FR 17669), announcing the reopening and modification of the original test from 2016. The notice announced a new email address for applications to participate in the modified test and information to be included in the email, instructions for discontinuation of participation in the test, as well as four new filing options for the submission of data and documents. The notice also announced two restrictions to the initial participation in the modified test. The modified test became operational on May 23, 2018. *See* also CSMS Message 18-000298.

On May 25, 2018, CBP issued CSMS Message 18-000364, summarizing the requirements for the modified test and specifying additional technical steps for test participation. The message also advised that ninety days after the opening of the modified test for public participation, CBP and FWS would suspend it in order to review the results before extending it. Accordingly, the modified test was suspended and, after review and evaluation of the modified test results, CBP determined as follows: additional technical programming needed to be completed by FWS; additional modifications to the programming instructions in the CBP Customs and Trade Automated Interface Requirements (CATAIR) for the applicable PGA Message Set would be required; and, greater and more diverse trade participation would be required to ensure success before the modified test would be reopened. Following the

¹ For access to all CSMS messages referenced in this notice, please see <https://www.cbp.gov/trade/automated/cargo-systems-messaging-service>.

suspension of the modified test, CBP worked closely with FWS and members of the trade to improve the design of the FWS test. Consequently, CBP is now prepared to reopen the FWS test for public participation, with the additional modifications described below.

II. New Test Modifications and Reopening for Public Participation

This document announces the reopening of the FWS test with two further modifications to streamline the PGA Message Set for FWS by limiting information provided to only data that is currently provided in FWS's eDecs system. To implement the modifications, CBP modified the programming in ACE to remove several record identifiers and other data elements. In addition, other technical programming changes have created efficiencies, *i.e.*, all FWS-staffed designated ports are now consolidated under the subheading "Wildlife Ports" in the CATAIR guidelines for FWS to align with the requirements in 50 CFR Part 14.12 of the FWS regulations. The updated ACE programming instructions for the PGA Message Set for FWS are available in the supplemental CATAIR document entitled FWS Implementation Guide. *See* <https://www.cbp.gov/trade/ace/catair> (the FWS Implementation Guide is available under the PGA Message Set chapter of the CATAIR). Finally, CBP made other minor modifications for the administration of the FWS test, specifically updating the contact information for both comments and questions to CBP and FWS, as well as for participation in and discontinuation of the test.

The remainder of this notice provides a more detailed description of the two modifications to streamline the submission process, followed by a comprehensive restatement of the entire FWS test, with all past and new modifications incorporated therein.² These

² The corresponding technical changes to the ACE programming requirements are set forth in the Document History section of the updated CATAIR, in the FWS Implementation Guide, which is

modifications affect certain filing options (specifically, filing options 2 and 4) of the FWS test. Before elaborating, and by way of background, it should be noted that the FWS test was designed to provide test participants with four different filing options when submitting import data, disclaimers, or documents in ACE: participants could either file FWS Form 3-177 data in ACE, using the PGA Message Set and DIS (option 1), file FWS Form 3-177 and required documents directly with FWS (option 2), file in the PGA Message Set using Disclaimer code “C” to indicate that they would file with FWS through eDecs at a later time (option 3), or file in the PGA Message Set using Disclaimer code “E” when a Harmonized Tariff Schedule of the United States code (hereinafter referred to as the HTS code) was flagged as “FW1”, but the commodity did not contain fish or wildlife (option 4).

A. Addition of a Limited Data Set (LDS) FWS Processing Code for Filing Option 2

Previously, test participants selecting filing option 2 for the FWS test could file the FWS Form 3-177 and required documents with FWS, and then 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).

This notice announces that filing option 2 is modified to be more efficient by adding a Limited Data Set (LDS) FWS processing code under filing option 2 for test participants to use, to indicate that the entire data set and required documents have already been filed directly with FWS. Thus, only limited data needs to be submitted in ACE, including the eDecs confirmation number or Disclaimer code “D”.

B. Removal of Disclaimer Requirement for Filing Option 4

available on the CBP website at <https://www.cbp.gov/trade/ace/catair> under the tab “PGA Message Set Documents.”

Previously, under filing option 4, when an HTS code was flagged as “FW1” (meaning tariff codes in which the commodities are likely to contain animals or animal products that require FWS declaration and clearance), but the commodity did not contain fish or wildlife, participants would 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. However, if a commodity contained both FWS-regulated and non-FWS regulated animal components, the filer was required to use Disclaimer code “E” in conjunction with one of the other options.

This notice announces that filing option 4 is modified to alleviate the unnecessary burden on the filer. Specifically, if a commodity contains both FWS-regulated and non-FWS-regulated animal components, the filer should submit a PGA Message Set only for the FWS-regulated animal component, using options 1 - 4. The Disclaimer code “E” that was previously required for the non-FWS-regulated animal components under option 4 is no longer required.

III. Description of Test

A. Test Participant Responsibilities

Test participants will be required to:

- (1) Transmit the Declaration data and Disclaimers electronically to ACE, when filing an entry in ACE, in the PGA Message Set, using one of the four filing options outlined below, at any time prior to the arrival of the merchandise on the conveyance transporting the cargo to the United States;
- (2) Transmit required permits or documents using DIS;

- (3) Submit original CITES and foreign-law paper documents directly to the FWS office at the applicable port;
- (4) Use a software program that has completed ACE certification testing for the PGA Message Set; and
- (5) Take part in a CBP-FWS evaluation of this test.

B. Test Participation and Selection Criteria (Certification)

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.

C. Application for Participation in Test

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 assigned CBP client representative, Trade Transformation Office, Office of Trade. Applicants without an assigned CBP client representative should submit their applications by email to CBP at FWS.Test.Participation@cbp.dhs.gov, with the subject heading "PGA Message Set FWS Test

FRN-Request to Participate.” 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 or modification test notice who wishes to participate in the reopening of the test should apply again pursuant to this notice.

D. Restrictions to Initial Participation in Test

Initially, participation in the test program 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.

E. Submission of Data and Documents in ACE

This test provides participants with four 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, using the Government Agency Processing Code “LDS” (Limited Data 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 an HTS code is flagged as “FW1”, participants may 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. If a commodity contains both FWS-regulated and non-FWS regulated animal components, the filer should submit a PGA Message Set for only the FWS-regulated animal component, using options 1-4. No Disclaimer code “E” is required for the non-FWS regulated animal component.

F. Discontinuation of Participation in Test

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.

IV. 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.

V. Test Duration

The test program and modifications announced in this notice will become operational on April 6, 2020. At the conclusion of the test program, 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 section 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.

VI. 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, Interagency Collaboration Division, Trade Policy and Programs (TPP), Office of 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 ten (10) calendar days of receipt of the written notice. The appeal must be submitted to the Executive Director, Trade Transformation Office (TTO), Office of Trade, by emailing TTO.Executive.Director@cbp.dhs.gov.

The Executive Director will issue a decision in writing on the proposed action within thirty (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 instances of willfulness or those in which public health, interest, or safety so requires, the Director, Interagency Collaboration Division, TPP, Office of 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 ten (10) calendar days of receipt of the written notice providing for immediate discontinuance. The

appeal must be submitted to the Executive Director, TTO, Office of Trade, by emailing TTO.Executive.Director@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 fifteen (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.

VII. 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.

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. 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.

X. Confidentiality

All data submitted and entered into ACE may be subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential by CBP, except to the extent as otherwise provided by law. As stated in previous notices, participation in these 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.

Dated: February 28, 2020.

Brenda B. Smith,

Executive Assistant Commissioner,

Office of Trade.

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